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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

KIMBERLY MARIE CURIEL, FREDERICK
MICHAEL CURIEL, M. T. C., a minor, by and
through her guardian ad litem Kimberly Marie
Curiel, T. A. C., a minor, by an through her
guardian ad litem Kimberly Marie Curiel, J. M.
C., a minor, by and through her guardian ad litem
Kimberly Marie Curiel, HAZEL ANNE
McCLURE, MICHAEL JASON SIKKEMA, D.
A. M. S., a minor, by and through his guardian ad
litem Hazel Anne McClure, C. R. M. S., a minor,
by and through her guardian ad litem Kimberly
Marie Curiel,

Plaintiffs,

v.

THE COUNTY OF CONTRA COSTA,
CONTRA COSTA COUNTY SHERIFF'S
DEPARTMENT SERGEANTS J. MAHONEY
and K. DALY, sued in their individual capacities
and as employees of Contra Costa County,
CONTR COSTA COUNTY SHERIFF'S
DEPARTMENT DETECTIVES JASON
BARNES, SHAWN PATE, CLARK CARY
GOLBERG, MOORE, UYEDA, AND VAN
ZELF, sued in their individual capacities and as
employees of Contra Costa County, CONTRA
COSTA COUNTY SHERIFF'S DEPUTIES
ARANDA AND HADLEY, sued in their
individual capacities and as employees of Contra
Costa County, SHERIFF WARREN RUPF,
CALIFORNIA AND DOES ONE through ONE
HUNDRED, et al.,

Defendants.

No. C 06-05751 WHA

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

INTRODUCTION

1
2 This civil rights action stems from the investigation of the murder of Pamela Vitale on
3 October 15, 2005, and the search surrounding the arrest of Scott Dyleski who was ultimately
4 convicted of the crime. Defendants now move for summary judgment on plaintiffs' claims
5 under 42 U.S.C. 1983 and California state law. Defendants have shown that there are no triable
6 issues of fact remaining as to whether they had probable cause to enter plaintiffs' house. Also,
7 defendants have shown that there were exigent circumstances, including a substantial risk of
8 destruction of evidence, that justified the warrantless entry. Furthermore, there remain no
9 triable issues of fact as to whether the manner of entry and subsequent detention were lawful.
10 There is a narrow triable issue of fact remaining, however, on whether plaintiff Michael
11 Sikkema went willingly with defendants to the Field Operations Bureau. Defendants moved for
12 summary judgment on plaintiffs' *Monell* claim on the grounds that there were no underlying
13 constitutional violations. Here, plaintiffs have shown that there is a triable issue of fact, thus
14 summary judgment on the *Monell* claims is not appropriate. As to plaintiffs' state-law claims,
15 defendants are either immune from suit or plaintiffs have not demonstrated triable issues of fact
16 as to whether the use of force was excessive. Sikkema's claim for violation of California Civil
17 Code § 52.1 survives to the extent that it is based on his transport to the Field Operations
18 Bureau. Accordingly, defendants' motion for summary judgment is **GRANTED IN PART AND**
19 **DENIED IN PART.**

STATEMENT

20
21 Plaintiffs Kimberly Marie Curiel, Frederick Michael Curiel, and their children M.T.C.,
22 T.A.C., and J.A.C., and Hazel Ann McClure and Michael Jason Sikkema and their children
23 D.A.M.S. and C.R.M.S. were present at 1050 Hunsaker Canyon on the evening of October 19,
24 2005. Defendants Sheriff Warren Rupf, Lieutenant Kathleen Parker, Sergeants James Mahoney
25 and Kevin Daly, Detectives Jason Barnes, Gary Clark, Cary Goldberg, Joseph Moore, Guy
26 Uyeda, Aaron Van Zelf, Laurie Bailey, Todd Santiago, Martin Ryan, Roque Barrientos,
27 Aldaberto Garibay, Rachel Fawell, and Rudolph Oest, and Deputies Oscar Aranda and Dale
28 Hadley were members of the Contra Costa County Sheriff's Department.

1 **1. INVESTIGATION OF THE VITALE HOMICIDE.**

2 As stated, this action stems from the investigation of the murder of Pamela Vitale on
3 October 15, 2005. On the afternoon of October 19, 2005, Joseph Motta, an attorney, contacted
4 Contra Costa County deputy district attorney William Clark regarding one of Motta's clients,
5 Tom Croen and his son Robin Croen (Clark Decl. ¶ 3). Clark consulted with Motta and the
6 Croens at Motta's office about Vitale's murder (*ibid.*). Based on his conversation with Croen
7 and Motta, Clark believed the Croens' statements would provide probable cause to support a
8 warrant to arrest Scott Dyleski, a friend of Robin Croen, on suspicion of homicide and credit
9 card fraud (*id.* at ¶ 4).

10 Clark then spoke with Detective Shawn Pate, a lead investigator on the Vitale homicide
11 (Seaton Decl. Exh. 1, 16:9–13). Pate met with Robin Croen at Motta's office (*id.* at 17:6–17).
12 The interview was recorded and later transcribed. Robin Croen gave details about a credit card
13 fraud scheme that he and Dyleski had orchestrated (Pate Decl. Exh. 1, 2–3). Dyleski and Robin
14 Croen were planning to steal credit card numbers on the internet and use them to place orders
15 for materials and paraphernalia for growing marijuana (*id.* at 3). Robin Croen emailed Dyleski
16 telling him what items they would need, and Dyleski stole the credit card information and
17 placed the orders using his home computer starting on October 12, 2005 (*id.* at 5–6). Dyleski's
18 computer was located at the Curiel house.

19 Dyleski and a friend came to Robin Croen's house on the evening of Saturday, October
20 15 (*id.* at 9). Robin Croen stated that he noticed scratches on Dyleski's nose (*id.* at 10).
21 Dyleski left a voice-mail message on his cell phone on Monday, October 17, saying that he
22 wanted to get together that evening (*id.* at 13). Robin Croen described Dyleski's voice as "a
23 little rushed" and "a little excited" (*ibid.*). The next day, Tuesday, October 18, Dyleski came to
24 visit Robin at his high school (*id.* at 14). Dyleski seemed agitated and told Robin that he was
25 considering admitting his involvement in the credit card fraud scheme to Fred Curiel, an adult
26 who lived in the same house (*id.* at 15). Dyleski also expressed a fear of being connected with
27 the Vitale homicide (*id.* at 16). Dyleski told Robin that he had encountered her while he was
28 walking in Hunsaker Canyon. He startled her; she grabbed his wrists and scratched him (*id.* at

1 17–18). Dyleski said that because of that encounter, he feared that Vitale’s DNA would be
2 found on his person.

3 Pate also spoke with Robin’s father Tom Croen, who had spoken with Fred Curiel on
4 Tuesday, October 18 (*id.* at 23). Fred told Tom that he was concerned that Dyleski was stealing
5 credit card information and wanted to know if Robin was also involved (*ibid.*). Fred stated that
6 he had looked at Dyleski’s computer and was afraid that some of the items the boys had ordered
7 had been sent to Vitale’s address and feared that the boys were involved in her death (*id.* at 24).
8 According to Fred Curiel, Dyleski had attempted to wipe the home computer clean of evidence
9 of the credit card fraud (*id.* at 23–24). Fred and Tom looked at Robin Croen’s computer and
10 confirmed that some of the items had been sent to Pamela Vitale’s address (*id.* at 24–25). Later
11 in the interview, Robin Croen recognized a symbol from Dyleski’s artwork that matched a
12 symbol that was carved into Vitale’s back (*id.* at 28–29).

13 Robin Croen also gave the detectives details about Dyleski’s living situation at 1050
14 Hunsaker Canyon and the layout of the property. Robin stated that Dyleski lived there with his
15 mother (*id.* at 33). Two other couples, Fred and Kim Curiel and Michael Sikkema and Hazel
16 Ann McClure, lived there as well with their children (*id.* at 34). Robin Croen gave a physical
17 description of Dyleski and drew a rough layout of the house (*id.* at 34–35). He also stated that
18 he had not generally known Dyleski to be violent, but that Dyleski’s absent father had stored a
19 shotgun in the house (*id.* at 37).

20 2. THE WARRANT.

21 Prior to meeting with Robin and Tom Croen, Pate contacted Sergeant James Mahoney
22 and told him to assemble deputies at the Field Operations Bureau; Pate did not give Mahoney
23 any details (Seaton Decl. Exh. 1, 17:9–17). In turn, Mahoney called his supervisor, Lieutenant
24 Kathleen Parker (*id.* at Exh. 4, 23:20–25).

25 Pate and Barnes ordered a warrantless entry of the house based on what they had learned
26 from Croen (Pate Decl. ¶ 11). The detectives both declared that based on their observation of
27 the crime scene, the suspect likely would have had blood on his clothes, and that there existed a
28 significant chance that the suspect would attempt to destroy that evidence (Pate Decl. ¶¶ 4–6;

1 Barnes Decl. ¶¶ 4–6). While Pate was interviewing Robin and Tom Croen, Barnes drafted
2 affidavits and warrant papers, receiving periodic updates from Pate and the other officers
3 (Barnes Decl. ¶ 11). Pate also declared that he believed there was a strong likelihood that
4 Dyleski would destroy evidence because he had already attempted to destroy evidence of the
5 credit card scheme, the Curiels had failed to come forward with information about the homicide
6 and the credit card fraud, the Curiels had visited an attorney, and Robin Croen’s testimony that
7 Dyleski was agitated and nervous (Pate Decl. ¶ 15). Pate also feared that Robin Croen might tip
8 off Dyleski that he was under suspicion, accidentally or not (*id.* at ¶ 16).

9 Pate and Barnes consulted with Clark and suggested locking down the house before they
10 could obtain a warrant (Pate Decl. ¶ 17; Barnes Decl. ¶ 12). Around the same time, Clark
11 contacted Contra Costa County Superior Court Judge William Kolin to apply for a search
12 warrant (Clark Decl. ¶ 6). Judge Kolin conducted a hearing at around 9:00 p.m. at the offices of
13 Joseph Motta (*id.* at ¶ 11). Judge Kolin reviewed the warrants and affidavits and signed them at
14 approximately 10:55 p.m. (*ibid.*). After Judge Kolin left the offices, Clark and Barnes noticed
15 that the box marked “nighttime service” was not checked (*id.* at 13; Barnes Decl. ¶ 15). Barnes
16 left a message at Judge Kolin’s home as he did not have his cell phone number (Barnes Decl. at
17 ¶ 16). Judge Kolin authorized Barnes to sign a new search warrant, confirmed that he had
18 authorized nighttime service and faxed written confirmation to Barnes at 1:36 a.m. the next
19 morning (*id.* at ¶ 17; Exh. 1).

20 3. ENTRY AND SEARCH OF THE HOUSE.

21 While Pate and Barnes were in the process of getting a warrant, Mahoney briefed the
22 assembled deputies and officers at the Field Operations Bureau and told them the address of the
23 house, the suspect’s first name, and that no warrants had yet issued (Seaton Decl. Exh. 4,
24 32:8–33:13). The deputies were told that the planned search was in connection with the Vitale
25 homicide. Mahoney testified that he was aware that several families lived in the house, but that
26 he had not verified that Dyleski would be present in the house (*id.* at 42:5–43:6).

27 The team arrived at 1050 Hunsaker Canyon at about 8:30 p.m. Defendants had not yet
28 obtained a search warrant. With Parker’s approval, Mahoney had made the decision to “lock

1 down” the property. Mahoney testified in his deposition that he feared evidence would be
2 destroyed, though he had little information regarding precisely who would be present in the
3 house (*id.* at 74:15–76:5). Parker, Mahoney, Goldberg, Bailey, Fawell, Garibay, Moore, Uyeda,
4 Santiago, and Ryan conducted the entry into the Curiel house. Daley, Clark, Van Zelf, and Oest
5 were stationed outside the house and came in after the initial entry. They stayed with plaintiffs
6 until the warrant was served. Defendants Aranda and Hadley, a trainee, later brought a digital
7 recorder to the house after entry.

8 The entry team approached 1050 Hunsaker Canyon at approximately 8:35 p.m.
9 Testimony conflicts as to whether the deputies performed a “knock-notice” before entering the
10 house. Defendant Uyeda testified that no one knocked on the door before entering. Upon
11 approaching the house, Uyeda reported seeing people running to the back of the house. Uyeda
12 then yelled “compromise!” — a signal that no knock was necessary and that the officers should
13 enter the house (Seaton Decl. Exh. 9, 29:3–24). Parker testified that she only heard the signal
14 and not a knock at the door (*id.* at Exh. 4, 53:2–4). Fred Curiel reported in his deposition that
15 he heard pounding on the front door which first alerted him to the officers’ presence (Hopkins
16 Decl. Exh. 15, 111:1–18). J.M.C. testified that she heard pounding on the front door and loud
17 voices and then ran to the back of the house (*id.* at Exh. 7, 9:20–10:21). T.A.C. also testified
18 that she heard knocking on the door while she was in the living room with her sister J.M.C. (*id.*
19 at Exh. 6, 8:15–25). It is not clear how much time elapsed between the pounding on the door
20 and deputies entry into the house.

21 T.A.C. and J.M.C. ran to their mother Kim Curiel’s room where she was sleeping. Fred
22 Curiel testified that he did not know that the people entering were police officers. He saw a
23 crouched figure in black clothing coming toward him who was later revealed to be Santiago
24 (Seaton Decl. Exh. 11, 120:1–10). Santiago had gone around to the back of the house and
25 entered through the open back door (*id.* at Exh. 18, 27:4–20). Santiago testified that he had
26 identified himself as a police officer. He then ordered Fred Curiel to get on the ground while
27 pointing a weapon at him (*id.* at Exh. 11, 126:4–12). Santiago pushed him to the ground,
28 although Curiel testified that he did not resist (*id.* at 127:10–128:20). Curiel did not report

1 suffering any physical injury as a result of Santiago's actions, although his head did hit the
2 carpeted floor. Santiago testified that Parker entered the room shortly thereafter and helped him
3 handcuff Fred Curiel (*id.* at Exh. 18, 29:10–30:9).

4 J.M.C., an 11-year-old girl, ran into the room and Parker pointed her weapon at her (*id.*
5 at Exh. 11, 61:10–62:15). After J.M.C. got on the floor, Fred Curiel testified that he saw Parker
6 place a booted foot on her back, and Parker's right knee was placed across J.M.C.'s shoulder
7 (*id.* at 130:20–131:2). At some point, Curiel also saw Parker lose her balance and sit or land on
8 J.M.C.'s back (*id.* at 215:18–216:2). Kim Curiel testified that her daughter's back was
9 reddened but not bruised as a result (*id.* at Exh. 13, 139:7–19). Fred Curiel also testified that
10 Santiago slammed his head into a carpeted floor, but he did not suffer any resulting injury (*id.* at
11 Exh. 11, 154:15–155:14). He remained handcuffed on the floor for about 15 minutes, and after
12 complaining about the handcuffs, they were removed at approximately 9:30 p.m. (*id.* at
13 291:10–292:21).

14 Kimberly Curiel, J.M.C., T.A.C. and Michael Sikkema ultimately ended up in the living
15 room. An armed female deputy directed Kim Curiel to get on the ground (*id.* at Exh. 12,
16 59:13–19). T.A.C. ran into the room, and the female deputy ordered her onto the ground as
17 well. She did so, and then crawled over to where her mother was lying (*id.* at Exh. 14,
18 15:20–17:7). M.T.C. testified in her deposition that she had been in her room when the deputies
19 entered. Frightened, she had crouched in her bedroom closet (*id.* at Exh. 15, 10:3–11:15).
20 Deputy Moore entered the room damaging the door, and found M.T.C. (*id.* at Exh. 8, 49:3–17).
21 He ordered her to get on the ground, and then took her downstairs where she was ordered to
22 lie down on the floor (*id.* at Exh. 15, 15:3–18:11).

23 Shortly thereafter, Michael Sikkema returned to the house carrying flowers and a bag of
24 groceries (*id.* at Exh. 17, 53:1–5). Sikkema was confronted by Mahoney and Fawell. In his
25 deposition, Sikkema testified that Mahoney yelled at him "I'm going to blow your fuckin' head
26 off" and used other obscenities and threats (*id.* at 59:8–22). The officers in their depositions
27 denied using or hearing any such language. At some point deputies handcuffed him, and
28

1 Sikkema reported that the handcuffs were on for approximately twenty minutes (*id.* at
2 129:20–25).

3 Hazel McClure was in an upstairs bedroom with her two children, C.R.M.S. and
4 D.A.M.S., when the deputies entered the house. Upon hearing that people had entered the
5 house, McClure picked up the children and hid in the bathroom (*id.* at Exh. 16, 58:1–4).
6 McClure testified that she heard someone kick down the bedroom door, and then open the
7 bathroom door (*id.* at 60:1–11). Uyeda entered with his gun drawn (*id.* at Exh. 9, 37:9–20).
8 McClure and her children were led downstairs to the living room.

9 One of the officers asked Kim Curiel if she knew where Scott Dyleski was. She
10 answered that Dyleski was at her brother Marcus Hogg’s house in Walnut Creek (*id.* at Exh. 12,
11 70:16–71:10). Mahoney then decided that four deputies — Daley, Oest, Van Zelf, and Clark —
12 should stay at the Curiel house, while the rest would go to Walnut Creek to continue looking for
13 Dyleski (*id.* at Exh.4, 70:1–13). The four officers were ordered to remain at the Curiel house
14 until a search warrant was signed (*id.* at Exh. 3, 68:15–24).

15 Plaintiffs were ordered to stay on the couches and chairs in the downstairs living room.
16 They were allowed to get up to use the restrooms and get blankets and food for the children
17 with the officers’ permission (*id.* at Exh. 6, 33:21–34:10). Some of the plaintiffs were
18 questioned at the house. Michael Sikkema testified that he was ordered to go to the Field
19 Operations Bureau for questioning. He did not recall asking whether or not he was required to
20 go to the station, only that someone told him he was going to the Bureau (*id.* at Exh. 17,
21 90:17–91:6). Fred Curiel and Hazel McClure were also taken to the Bureau for questioning, as
22 was Dyleski’s mother Esther Fielding, who is not a plaintiff in this action (*id.* at Exh. 12,
23 84:12–13; Exh. 11, 189:3–8). Kim Curiel testified in her deposition as follows (Hopkins Decl.
24 Exh. 5, 79:7–13):

25 Q. After they took Fred’s handcuffs off, what is the next
26 thing that occurred?

27 A. They [the officers] asked Esther, Fred, Michael if they’d
28 be willing to go downtown to make a statement.

Q. And what did they say?

1 A. They said they would, and they got up to go.

2 Hazel McClure testified at her deposition that there was no discussion of whether or not
3 plaintiffs were free to leave the premises (*id.* at Exh. 16, 75:16–25). Plaintiffs were aware that
4 they were not suspects in either the homicide or the credit card fraud. Fred Curiel returned to
5 the house at around 5:00 a.m. (*id.* at Exh. 11, 279:9–10). Shortly after midnight, the search of
6 the house began. Plaintiffs testified that they were not allowed to move about the house until
7 9:00 a.m. The search lasted until approximately 11:00 a.m. the next morning.

8 **4. PROCEDURAL HISTORY.**

9 This action was filed on September 19, 2006. An amended complaint was filed on
10 February 5, 2007, naming additional defendants. Plaintiffs alleged the following claims: (1) a
11 violation of 42 U.S.C. 1983 against all individual defendants; (2) a claim for supervisory
12 liability under 42 U.S.C. 1983 against Rupf in his individual capacity, Parker, Mahoney, and
13 Daley; (3) a *Monell* claim against Contra Costa County; (4) trespass against all defendants; (5)
14 false imprisonment against all defendants; (6) assault against all defendants; (7) battery by
15 plaintiffs J.M.C. and Fred Curiel against all defendants; (8) intentional infliction of emotional
16 distress against all defendants; (9) negligent infliction of emotional distress against all
17 defendants; and (10) violations of California Civil Code §§ 52 and 52.1 against all defendants.
18 This motion was filed on May 22, 2007.

19 A hearing was held on August 2, 2007. Thereafter, an order issued asking plaintiffs and
20 defendants for supplemental briefing on the narrow issue of whether plaintiffs Kim Curiel, Fred
21 Curiel, and Michael Sikkema went willingly to the Field Operations Bureau for questioning.
22 Parties were requested to confine their submissions to the summary-judgment records. Briefs
23 were submitted on August 10, 2007.

24 **ANALYSIS**

25 Summary judgment should be granted where the pleadings, discovery, and affidavits
26 show “that there is no genuine issue as to any material fact and that the moving party is entitled
27 to judgment as a matter of law.” FRCP 56(c). The moving party has the initial burden of
28 production to demonstrate the absence of any genuine issue of material fact. *Playboy*

1 *Enterprises, Inc. v. Netscape Communications Corp.*, 354 F.3d 1020, 1023–24 (9th Cir. 2004).
2 Once the moving party has met its initial burden, the nonmoving party must “designate specific
3 facts showing there is a genuine issue for trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24
4 (1986). “If the moving party shows the absence of a genuine issue of material fact, the non-
5 moving party must go beyond the pleadings and ‘set forth specific facts’ that show a genuine
6 issue for trial.” *Leisek v. Brightwood Corp.*, 278 F.3d 895, 898 (9th Cir. 2002) (citation
7 omitted).

8 Defendants move for summary judgment on the ground that they are entitled to qualified
9 immunity for their actions. First, they argue that there was no violation of plaintiffs’
10 constitutional rights. Second, at all events, a reasonable officer in defendants’ position would
11 not have been on notice that their actions were violating plaintiffs’ constitutional rights. Third,
12 defendants contend that because there was no violation of a constitutional right, plaintiffs’
13 *Monell* claims must be dismissed. Fourth, plaintiffs’ claims against Sheriff Warren Rupf should
14 be dismissed because plaintiffs did not allege his personal involvement and because he is
15 immune from suit as a state official under the Eleventh Amendment. Finally, defendants argue
16 that plaintiffs’ state-law claims fail because defendants are immune from suit under California
17 law and because there was no underlying violation of plaintiffs’ constitutional rights. It is true
18 that there are certain fact disputes. For the reasons stated below, however, all but one of them
19 are not material.

20 **1. CONSTITUTIONAL VIOLATIONS.**

21 Plaintiffs identified four ways in which defendants violated their constitutional rights
22 under the Fourth Amendment. First, they argue that defendants’ entry into the Curiel house
23 without a warrant was not justified by exigent circumstances. Second, plaintiffs argue that even
24 if defendants’ warrantless entry was justified, defendants did not comply with “knock and
25 announce” procedures. Third, plaintiffs contend that defendants used excessive force in
26 entering and securing the house and that the detention of plaintiffs was overly long and
27 restrictive. Finally, they contend that taking plaintiffs’ to the Field Operations Bureau violated
28 their constitutional rights.

1 **A. Warrantless Entry.**

2 “The securing of a residence by police constitutes a ‘seizure’ under the Fourth
3 Amendment.” *United States v. Perdoma*, 800 F.2d 916, 918 (9th Cir. 1986). Without a
4 warrant, such a seizure violates the Fourth Amendment unless it falls within an established
5 exception, such as a protective sweep incident to an arrest or exigent circumstances. *See*
6 *Warden v. Hayden*, 387 U.S. 294, 298 (1967). Warrantless entry is prohibited unless the police
7 have probable cause and can show exigent circumstances. *LaLonde v. City of Riverside*, 204
8 F.3d 947, 954 (9th Cir. 2000). Here, defendants concede that they did not have a warrant at the
9 moment of entry and instead argue their entry was justified by exigent circumstances.

10 **(1) Probable Cause.**

11 Defendants present evidence that they had established probable cause before going to
12 the Curiel house. Probable cause requires a fair probability or substantial chance of criminal
13 activity, as determined by the totality of the circumstances known to the officers at the time.
14 *United States v. Alaimalo*, 313 F.3d 1188, 1193 (9th Cir. 2002). Here, defendants contend that
15 statements from Robin Croen and Tom Croen established probable cause that the officers would
16 find evidence of Vitale’s murder and the credit card fraud scheme at the Curiel house. Robin
17 Croen admitted that he and Dyleski had conducted the credit card fraud scheme. Robin Croen
18 also established that Dyleski was growing increasingly nervous about being implicated in the
19 Vitale homicide because Dyleski had told him he feared that Vitale’s DNA could have ended up
20 on his person. Tom Croen’s statements revealed that Fred Curiel was also panicking about the
21 connection between the fraud and the murder because they had discovered Vitale’s address on
22 some of the packages ordered with stolen credit card numbers. Fred Curiel also stated that
23 Dyleski had tried to wipe his computer, which was located in the Curiel house, clean of
24 evidence of the credit card fraud scheme. Finally, Robin Croen established that Dyleski lived,
25 at least part of the time, at the Curiel house. Defendants also point out that a warrant issued
26 based on the same facts once Pate and Barnes were able to hold a hearing. The warrant was
27 upheld in the criminal case against Dyleski.

28

1 Plaintiffs do not dispute the contents of the Croens' statements; they contest only Pate
2 and Barnes' conclusions. They point out that none of the evidence defendants present to
3 establish probable cause showed that Scott Dyleski would actually be at the Curiel house on the
4 night of October 19, 2005. Plaintiffs are correct that Robin Croen testified that Dyleski did not
5 stay at the Curiel house all of the time and that none of the officers knew for sure that Dyleski
6 would actually be there at the time they were searching. Certainty that Dyleski was in the house
7 at the time is simply not necessary for a lawful search. *See Los Angeles v. Rettele*, ___ U.S.
8 ___, 127 S. Ct. 1989, 1992 (May 21, 2007) (upholding grant of qualified immunity where the
9 house searched had been sold to other people, and officers found and detained occupants of a
10 different race than the subjects of the warrant). Furthermore, in searching Dyleski's house the
11 officers were looking not only for Dyleski himself, but also for evidence connected to the crime.
12 Plaintiffs also contend that the Croen's statements did not link Dyleski to the Vitale homicide.
13 Robin Croen established that Dyleski had already told Fred Curiel of his involvement in the
14 credit-card fraud, and that Dyleski feared that he could be connected to the Vitale homicide.
15 The statements also indicated that Dyleski was nervous and agitated, and that some of the items
16 ordered with the stolen credit card numbers were sent to Vitale's address. Accordingly,
17 defendants had probable cause to search the house.

18 (2) *Exigent Circumstances.*

19 Exigent circumstances are defined as "those circumstances that would cause a
20 reasonable person to believe that entry (and other relevant prompt action) was necessary to
21 prevent physical harm to the officers or other persons, the destruction of relevant evidence, the
22 escape of the suspect, or some other consequence improperly frustrating legitimate law
23 enforcement effort." *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir. 1984) (en
24 banc). "The government bears the burden of showing the existence of exigent circumstances by
25 particularized evidence." *United States v. Tarazon*, 989 F.2d 1045, 1049 (9th Cir. 1993).
26 Conditions constituting exigent circumstances include the need to protect officers or the public
27 from danger, the need to avoid imminent destruction of evidence, the need to prevent a
28

1 suspect's escape, and the need to respond to other emergencies. *United States v. Brooks*, 367
2 F.3d 1128, 1133 n.5 (9th Cir. 2004) (citations omitted).

3 Exigent circumstances can be shown where "police officers . . . reasonably believe from
4 the totality of the circumstances that (a) evidence or contraband will imminently be destroyed or
5 (b) the nature of the crime or character of the suspect(s) pose a risk of danger to the arresting
6 officers or third persons." *United States v. Ojeda*, 276 F.3d 486, 488 (9th Cir. 2002) (citation
7 omitted). Merely stating that evidence is present is not sufficient; there must be some showing
8 that removal or destruction of evidence is imminent. *United States v. Driver*, 776 F.2d 807, 810
9 (9th Cir. 1985). In support, defendants contend that they were afraid that Dyleski would
10 destroy evidence of the crimes and that he could flee or be a danger to the officers or third
11 parties.

12 Again relying on statements by Robin and Tom Croen, defendants present powerful
13 evidence that Dyleski was agitated and afraid that he could be connected to the Vitale homicide.
14 Dyleski had already attempted to "wipe[] his computer clean" of evidence of the credit card
15 fraud scheme (Pate Decl. Exh. 1, 23). The computer was located at the Curiel house. Fred
16 Curiel had approached Tom Croen wanting to know if there was any such evidence on Robin's
17 computer. Curiel also knew that Robin Croen and Dyleski had sent packages to Pamela
18 Vitale's address. Moreover, Dyleski had told Robin Croen the story about encountering Vitale
19 in the woods in which Dyleski had expressed his concern about being connected to her
20 homicide. Pate and Barnes had observed the crime scene and declared that because of the
21 nature of the crime, the suspect likely had the victim's blood and DNA on his or her clothes. A
22 canine search of the woods surrounding the crime scene turned up no murder weapon or
23 clothing. Thus, they concluded that the suspect likely retained possession of those items.
24 Based on Pate and Barnes' experience, blood and DNA evidence on clothing is easily washed
25 or destroyed.

26 Plaintiffs argue that defendants have presented no evidence that Dyleski was aware that
27 he was suspected in the Vitale homicide. This hardly matters because defendants have
28 established, and plaintiffs do not refute, that Dyleski was agitated and had already attempted to

1 destroy evidence of his involvement in the credit card scheme. He also feared being connected
2 to the Vitale homicide. Plaintiffs repeat the argument that defendants had not verified that
3 Dyleski was actually at the Curiel house on the evening it was to be searched. As it was in the
4 discussion of probable cause, this argument is a red herring. The officers did not need to be
5 certain Dyleski would be there at the time. Defendants were likely to find evidence there
6 because the Curiel house was located within walking distance of the crime scene and the
7 officers had established that the perpetrator left the scene on foot. The officers were attempting
8 to get a warrant at the time, but they also feared that Robin Croen might tip off Dyleski to the
9 fact that he was a suspect in the Vitale homicide. It was not necessary for the officers to know
10 for sure the whereabouts of Dyleski, only that there was a reasonable possibility that Dyleski
11 was himself at the residence (or that a confederate might be at the residence), thus placing the
12 murder evidence in peril.

13 Another factor to consider is the severity of the crime at issue. Neither side disputes that
14 the crime at issue was an exceptionally brutal and vicious homicide. Plaintiffs point out that the
15 seriousness of the offense in itself cannot create exigent circumstances sufficient to justify a
16 warrantless search. *Mincey v. Arizona*, 437 U.S. 385, 394 (1978). It is, however, still a
17 significant factor. In combination with the rest of the circumstances, the severity of the crime
18 increased the incentives for all of those connected with it to destroy evidence, to flee, and to
19 place others in danger, all the more so given that Dyleski was said to be worried about detection
20 even if he did not know for sure that he was under supervision. Even viewing the evidence that
21 in the light most favorable to the plaintiffs, defendants have eliminated all triable issues of fact
22 as to whether exigent circumstances justified warrantless entry into the Curiel house.

23 **B. Use of Force in Entering the Curiel House.**

24 “Determining whether the force used to effect a particular seizure is reasonable under
25 the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on
26 the individual’s Fourth Amendment interests against the countervailing governmental interests
27 at stake.” *Graham v. Connor*, 490 U.S. 386, 396 (1989) (citations omitted). Determining
28 whether the force used was reasonable “requires careful attention to the facts and circumstances

1 of each particular case, including the severity of the crime at issue, whether the suspect poses an
2 immediate threat to the safety of the officers or others, and whether he is actively resisting
3 arrest or attempting to evade arrest by flight.” *Ibid.* “The reasonableness of a particular use of
4 force must be judged from the perspective of a reasonable officer on the scene, rather than with
5 the 20/20 vision of hindsight” *Id.* at 396–97.

6 (1) ***Knock and Announce.***

7 Plaintiffs first contend that defendants’ failure to “knock and announce” violated their
8 Fourth Amendment rights. Officers executing a warrant are generally required to knock on the
9 door or otherwise announce their presence before forcibly entering. The common-law
10 requirement to knock and announce forms part of the reasonableness inquiry under Fourth
11 Amendment law; it is not a predicate to a constitutional search or seizure. *Wilson v. Arkansas*,
12 514 U.S. 927, 934 (1995). The amount of time officers are required to wait after announcing
13 their presence is very fact-specific. *United States v. Banks*, 540 U.S. 31, 37–38 (2003) (holding
14 that an interval of fifteen to twenty seconds was sufficient where officers had a reasonable
15 suspicion that a suspect could destroy narcotics, even though the suspect was actually in the
16 shower). The act of knocking on the door is not always dispositive particularly where the
17 officers made their presence known by other means, such as nearing the house or running up
18 stairs to an apartment. *See United States v. Combs*, 394 F.3d 739, 744–45 (9th Cir. 2005).

19 To justify a “no-knock” entry, “the police must have a reasonable suspicion that
20 knocking and announcing their presence, under the particular circumstances, would be
21 dangerous or futile, or that it would inhibit the effective investigation of the crime by, for
22 example, allowing the destruction of evidence.” *Richards v. Wisconsin*, 520 U.S. 385, 395
23 (1997). Even if the warrant itself is silent on whether a no-knock entry is allowed, exigency
24 sufficient to justify a no-knock entry may later arise while executing the search or seizure *Id.* at
25 394, 396. The Ninth Circuit has held that any one of the exigent circumstances enumerated in
26 *Richards* — danger, flight of a suspect, or destruction of evidence — is sufficient to justify a
27 no-knock entry. *United States v. Bynum*, 362 F.3d 574, 579 (9th Cir. 2004).

28

1 Defendants acknowledge that there is a factual dispute over whether the officers
2 knocked and announced before entering. They present evidence that the occupants of the house
3 heard the officers knock on the door. Specifically, Fred Curiel, T.A.C. and M.T.C. all heard
4 someone pounding on the door and yelling, although they could not make out what was being
5 said. Plaintiffs point out that defendants Uyeda and Parker did not recall if anyone had knocked
6 on the door before the officers entering. Uyeda testified that he recalled yelling “compromised”
7 when he saw the occupants running toward the back of the house. Accordingly, there remains a
8 factual dispute as to whether defendants followed knock-and-announce procedures, and if they
9 did, how long they waited before entering the house.

10 This factual dispute does not create a triable issue of fact, because even when analyzed
11 under the standard for a no-knock entry, the officers’ actions were still reasonable. The officers
12 and deputies feared that evidence would be destroyed, and once they saw the occupants of the
13 house running, they reasonably believed that knocking would have been futile. The officers
14 also feared that occupants might destroy or tamper with evidence of the murder, inadvertently
15 or not. Robin Croen had also alerted the Pate and Barnes to the fact that Dyleski’s absent father
16 kept a shotgun in the Curiel house which raised the concern that Dyleski could be armed.
17 Finally, when the officers arrived at the Curiel house and began their approach, they saw people
18 inside the house running toward the back door. This indicated that the occupants were aware of
19 the officers’ presence and would not be willing to open the door. The Curiel house was located
20 in a wooden area, and the police arrived at the house at around 8:30 p.m., so the area
21 surrounding the house was dark. The officers reasonably believed that someone in the house
22 was preparing to flee or destroy evidence, so they entered the house. Thus, even if none of the
23 officers knocked on the door, and regardless of how much time may have passed between a
24 knock at the door and defendants’ entry, defendants actions were still reasonable under a no-
25 knock standard.

26 Plaintiffs argue that no such exigency existed that would have justified a no-knock
27 entry. Plaintiffs do not dispute that people inside the house started running once they heard the
28 officers outside, but instead point out that the people running toward the back of the house were

1 actually young girls. Plaintiffs also repeat that the officers had not made certain that Dyleski
2 would be in the house at that time, and that Tom and Robin Croen's statements had not
3 established that Dyleski knew that he was being suspected of murder. Again, the officers need
4 not have known for certain that Dyleski would be there at the time. Finally, they also contend
5 that although Robin Croen stated that there was a gun in the house, but gave the officers no
6 reason to believe that Dyleski or any other resident was violent or involved with guns.

7 The officers never testified that they had recognized the people running toward the back
8 of the house as young girls, they merely saw people running to the back of the house.
9 Moreover, viewed from the perspective of an officer under the same circumstances, such
10 activity would indicate that the occupants were attempting to flee or would be unwilling to open
11 the door. These actions, under the circumstances, support a reasonable belief that knocking on
12 the door would have been futile. As to Robin and Tom Croen's statements, they established
13 that Dyleski had already destroyed evidence and that he feared being connected with the Vitale
14 homicide. Plaintiffs' contention that the officers were unreasonable in thinking that Dyleski
15 could be violent or dangerous ignores the fact that he was a suspect in a very brutal homicide.
16 Even viewing the facts in the light most favorable to plaintiffs, a reasonable jury would be
17 obliged to find that defendants' actions in performing a no-knock entry were lawful.
18 Accordingly, no triable issues of fact remain, and summary judgment for defendants is
19 appropriate on this issue.

20 (2) *Force Used in Detaining Plaintiffs.*

21 Plaintiffs allege that defendants used excessive force in entering the house and detaining
22 plaintiffs. Plaintiffs contend that the officers' entering the house with their guns drawn,
23 pointing the guns at the occupants, and yelling and using curse words constituted excessive
24 force. "While it seems unlikely that harsh language alone would render a search and seizure
25 unreasonable, verbal abuse may be sufficient to tip the scales in a close case." *Holland ex rel.*
26 *Overdorff*, 268 F.3d 1179, 1194 (9th Cir. 2001). Fred and Kim Curiel testified that the officers
27 entered the Curiel house using profanity and threats. (The defendant officers testified that they
28 did not recall hearing the use of profanity, but this order assumes that they did so, as alleged.)

1 Plaintiffs, however, present no evidence that such profanity continued after the deputies had
2 secured the house.

3 Plaintiffs also allege that defendants' entry into the house with guns drawn, and later
4 pointing guns at them, constituted excessive force. Plaintiff cites *Baldwin v. Placer County*,
5 418 F.3d 966, 970 (9th Cir. 2002), for the proposition that "paramilitary-style" entries with guns
6 drawn are improper. That decision is distinguishable; where the officers in *Baldwin* had
7 articulated no facts supporting the inference that the suspect was armed or dangerous, here,
8 defendants have done so. Moreover, the officers in *Baldwin* were investigating a small
9 marijuana growing operation, not a homicide. *Id.* at 968. Simply put, defendants had no way of
10 knowing who they would encounter on entering 1050 Hunsaker Canyon. There is no dispute
11 that the officers were aware that small children might be present in the house, but they were
12 also looking for a suspect in a homicide who was potentially armed. Dylseki himself might
13 have been armed as might have been a confederate. Faced with a potential for harm to
14 themselves as well as others, the officers acted reasonably under the circumstances. Moreover,
15 as with the use of foul language, plaintiffs present no evidence that the officers continued to
16 point guns at plaintiffs after the house had been secured.

17 Plaintiffs also argue that the handcuffing of Sikkema and Fred Curiel constituted
18 excessive force. Governmental interests in using handcuffs are at a maximum when pursuing
19 dangerous suspects with a reasonable belief that they may be armed, and are at a minimum
20 when pursuing unarmed suspects in non-violent crimes. *See Baldwin*, 418 F.3d at 970 (holding
21 that a paramilitary style, no-knock entry, pointing guns at suspects and handcuffing them was
22 unlawful when search non-violent suspects for marijuana growing materials). Overly tight
23 handcuffs can constitute excessive force. *Meredith v. Erath*, 342 F.3d 1057, 1062 (9th Cir.
24 2003) (holding that placing a detainee in handcuffs was unlawful where officers were
25 investigating tax fraud and the handcuffs caused the plaintiff pain).

26 Neither side disputes that Fred Curiel and Sikkema were handcuffed before defendants
27 knew their identity. Fred Curiel testified that Santiago pushed or shoved his head into a
28 carpeted floor. By all accounts, he suffered no injury from Santiago's actions. While

1 handcuffed, Fred Curiel complained that the handcuffs were hurting him. They were removed
2 at approximately 9:30 p.m., after the house was secured and after the majority of the deputies
3 left. Sikkema was handcuffed for approximately twenty minutes. Here, the officers' actions
4 were reasonable under the circumstances. It is undisputed that they entered a house looking for
5 a violent male suspect in a murder case. The only people they handcuffed were adult males
6 found in a known residence of the suspect. Once the situation had calmed down and the
7 officers were certain that the men did not pose any danger, the handcuffs were removed.
8 Neither Sikkema nor Fred Curiel suffered any lasting injury. Accordingly, defendants' actions
9 were reasonable under the circumstances.

10 Finally, plaintiffs allege that Parker's use of force against J.M.C. was excessive and
11 unreasonable. Parker testified that she lightly placed her foot on J.M.C.'s back in the initial
12 stages of securing the Curiel house because J.M.C. was wriggling and twitching. J.M.C.
13 testified that she had complied with Parker's demands. Later, both sides agree that Parker lost
14 her balance causing her to put more weight on J.M.C.'s back. J.M.C. later reported no bruising
15 or pain, only redness of her back. Even viewing the evidence in the light most favorable to
16 plaintiffs, Parker's actions were reasonable under the circumstances because of the very
17 minimal amount of force used and the need to maintain the security of the scene.

18 **(3) Duration of Detention.**

19 Plaintiffs argue that the duration and nature of the detention was unreasonable and
20 violated plaintiffs' Fourth Amendment rights. Officers executing a search warrant have
21 authority to detain the occupants of the premises while a proper search is conducted. *Michigan*
22 *v. Summers*, 452 U.S. 692, 705 (1981). "An officer's authority to detain incident to a search is
23 categorical; it does not depend on the quantum of proof justifying detention or the extent of
24 intrusion to be imposed by the seizure." *Muehler v. Mena*, 544 U.S. 93, 100 (2005) (upholding
25 a search of an interior of a home taking approximately four hours during which occupants were
26 handcuffed). A detention in connection with a search may be unlawful if is unnecessarily
27 painful, degrading, or prolonged. *Franklin v. Foxworth*, 31 F.3d 873, 876 (1994). The
28 detention of the residents of a boardinghouse for several hours to investigate health code

1 violations was held to be a reasonable seizure. *Dawson v. City of Seattle*, 435 F.3d 1054,
2 1069–70 (9th Cir. 2006).

3 Neither side disputes that plaintiffs were detained for approximately thirteen hours while
4 the deputies awaited the issuance of a warrant and then completed a search of the house and the
5 surrounding wooded area. Likewise, neither side disputes that plaintiffs were ordered to stay in
6 the living room area. If they asked permission from the officers, plaintiffs were allowed to use
7 the bathroom and get food and blankets for the children. Plaintiffs were permitted to sleep on
8 the couches and chairs in their living room while the search was being conducted. Plaintiffs
9 were not allowed to use the telephone. The facts of the detention itself are not contested.

10 Plaintiffs divide the period of detention into two portions — from about 8:30 p.m. until
11 1:30 a.m. when defendants got a warrant and the remainder of the time when defendants were
12 searching the house and the surrounding area. They argue detention during the first period,
13 before the officers got a warrant, was presumptively unreasonable because there was no
14 exigency that would have justified the warrantless entry. As described at length above, the
15 argument has already been rejected, and the defendants have shown that warrantless entry was
16 reasonable under the circumstances.

17 Turning now to the law enforcement interests in the search, defendants contend that it
18 was necessary to detain plaintiffs to conduct an orderly search. There was a risk that the search
19 efforts could have been hindered or problems could have arisen with chains of custody and
20 tainted evidence. The officers also had an interest in keeping plaintiffs close at hand in case
21 they needed to gain access to any locked or restricted areas. Since Dyleski lived at 1050
22 Hunsaker Canyon, the officers reasonably thought he might be there. Defendants also knew
23 that there was likely some evidence to be found on Dyleski's computer, which was located in
24 the house. The Curiel house was located on a large, wooded lot, and the officers needed
25 sufficient time to search the house and the grounds. Furthermore, defendants present evidence
26 that they took steps to minimize the pain and inconvenience of the detention. They attempted to
27 make the occupants as comfortable as possible under the circumstances. With permission,
28 plaintiffs were allowed to move about to use the restroom and bring food to the children.

1 Restricting the use of the telephone can be held to be reasonable to prevent the sending
2 of an alert to another party about to be searched. *Ganwich v. Knapp*, 319 F.3d 1115, 1120 (9th
3 Cir. 2003). Here, defendants were concerned that if plaintiffs were allowed to use the telephone
4 during the search, they could alert others who were about to be searched. Indeed, Kim Curiel
5 knew where Dyleski was that evening. This could have resulted in Dyleski's being alerted to
6 the fact that the police were coming after him. Because this was a high-profile case, defendants
7 also had an interest in preventing the fact of the search from being leaked to the media which
8 would make conducting an orderly search even more difficult. Accordingly, defendants were
9 reasonable in preventing plaintiffs from using the telephone during the search.

10 (4) *Questioning at the Field Operations Bureau.*

11 At oral argument, plaintiffs raised the argument that Fred Curiel, McClure and Sikkema
12 were compelled to go to the Field Operations Bureau. This argument was barely touched on in
13 plaintiffs' opposition. After the hearing on this motion, the Court asked plaintiffs and
14 defendants to submit supplemental briefing on the issue of whether there was a triable issue of
15 fact that defendants' taking plaintiffs to the Field Operations Bureau for questioning constituted
16 a violation of their constitutional rights. Parties were cautioned not to repeat arguments from
17 their prior briefs or oral arguments.

18 By citing *Michigan v. Summers*, 452 U.S. 692, 701 (1981), plaintiffs appear to argue
19 that a detention during a search should not be exploited or unduly prolonged to gain more
20 information. Plaintiffs argue that Sikkema "testified that he was forced to go to the FOB for
21 questioning" (Opp. at 22). Sikkema's deposition testimony, to which plaintiffs cited, states
22 (Seaton Decl. Exh. 17, 90:17-91:1):

23 Q. At some point before they took you to the police station,
24 did you say. "Do I have to go to the police station with
you"?

25 A. I don't remember saying that.

26 Q. Did anybody tell you that you had to go whether you
27 wanted to or not?

28 A. I was ordered to go.

Q. What was said to you?

1 A. “You’re going to the police station with them. Get in that
2 car.”

3 Kim Curiel testified that Sikkema agreed to go with the officers and give a statement. Neither
4 side presented additional facts regarding what took place at the Field Operations Bureau. At
5 least as to the Curiels and Hazel McClure, plaintiffs do not present evidence that they did not
6 give statements willingly. Defendants presented facts, which plaintiffs did not dispute, that
7 plaintiffs were aware that they were not suspects in either the credit card fraud or the Vitale
8 homicide.

9 Defendants first contend that there was no independent seizure of plaintiffs because they
10 were detained under exigent circumstances and then pursuant to a search warrant. “Mere police
11 questioning does not constitute a seizure.” *Florida v. Bostick*, 501 U.S. 429, 434 (1991). Law
12 enforcement officers can permissibly question an otherwise lawfully detained citizen, and doing
13 so does not constitute an independent event under the Fourth Amendment provided that the
14 officers do not exploit the situation to unreasonably prolong the detention. *Muehler*, 544 U.S.
15 at 100–01. Defendants also point out that any questioning occurred after the search warrant had
16 issued and the situation at the Curiel house had calmed down considerably from the initial,
17 chaotic entry. Furthermore, all plaintiffs, save Michael Sikkema, transported to the Field
18 Operations Bureau went willingly.

19 In response, plaintiffs present Michael Sikkema’s deposition, in which he testified that
20 he was ordered to go to the Field Operations Bureau. Defendants seem to argue that as long as
21 Sikkema’s trip to the Field Operations Bureau did not prolong the search, it was not a violation
22 of his Fourth Amendment rights, regardless of whether he gave consent or not. *Muehler* and its
23 progeny do not go so far. Indeed, the Ninth Circuit in *Ganwich* recognized that if law
24 enforcement officers conditioned a detainee’s release on cooperation with an interview, the
25 detention would be a violation of the Fourth Amendment. 319 F.3d at 1120–22. It is far from
26 clear that the officers placed any such conditions on Sikkema’s detention, but defendants stretch
27 precedent too far. Accordingly, there is a material dispute of fact as to whether Sikkema went
28 willingly to the Field Operations Bureau, and whether such action violated his Fourth
 Amendment rights.

1 Plaintiffs also contend that even for those plaintiffs who voluntarily gave statements or
2 went with the officers, the totality of the circumstances shows that their consent could not have
3 been valid. Plaintiffs cite to *Ganwich v. Knapp*, 319 F.3d at 1120–22, in which police officers
4 detained employees during a search, and explicitly conditioned their release on submitting to
5 individual police interviews. The Ninth Circuit held that such detention violated the *Ganwich*
6 plaintiffs’ Fourth Amendment rights. Here, however, there is no indication that plaintiffs’
7 release was explicitly conditioned on cooperating with the officers. That theory of coercion
8 makes even less sense here, where plaintiffs were returned to the house several hours before the
9 search was completed. Plaintiffs cite another decision, *Bettin v. Maricopa County*, 2007 WL
10 1713319, *7–*10 (D. Ariz. June 12, 2007) (Aspey, J.), in which a criminal suspect’s Fourth
11 Amendment rights were violated when she was coerced to submit to interrogation for purposes
12 unrelated to the detention for the search. The plaintiff was advised she was under investigative
13 detention. Here, plaintiffs knew they were not suspects in a crime.

14 In sum, viewing the evidence in the light most favorable to the plaintiffs, there remains a
15 triable issue of fact as to whether Michael Sikkema went willingly with defendants to the Field
16 Operations Bureau. Defendants’ motion for summary judgment is **DENIED** as to that narrow
17 issue. As to all other alleged violations of plaintiffs’ constitutional rights, this order finds that
18 there are no triable issues of fact remaining, thus defendants’ motion for summary judgment is
19 **GRANTED IN PART AND DENIED IN PART.**

20 2. QUALIFIED IMMUNITY.

21 The threshold question in deciding whether officials are entitled to qualified immunity is
22 whether, taken in the light most favorable to the party asserting injury, the facts show that the
23 officer’s conduct violated a constitutional right. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). If a
24 violation is established, then the court must ask whether the law forming the basis of the
25 violation was clearly established. *Ibid.* “The relevant, dispositive inquiry in determining
26 whether a right is clearly established is whether it would be clear to a reasonable officer that his
27 conduct was unlawful in the situation he confronted.” *Id.* at 208. “If the law did not put the
28 officer on notice that his conduct was unlawful, summary judgment based on qualified

1 immunity is appropriate.” *Id.* at 202. Finally, the officers are still entitled to summary
2 judgment if they had a reasonable, though mistaken, view of either the law or the facts. *Id.* at
3 1213.

4 Here, this order has established that there are no triable issues of fact remaining as to
5 whether plaintiffs’ Fourth Amendment rights were violated when defendants entered the Curiel
6 house without a warrant. Still, it is worth noting that defendants relied on the advice of counsel
7 in conducting that warrantless entry of the Curiel house. Provided officers behave reasonably,
8 consulting with an attorney or legal expert before taking action militates in favor of qualified
9 immunity. *See Los Angeles Police Protective League v. Gates*, 907 F.2d 879, 888 (9th Cir.
10 1990). Here, Pate and Barnes consulted deputy district attorney Clark in making the decision to
11 freeze the Curiel house before a warrant issued. Clark gave them advice and told them that the
12 warrantless entry was permitted under the circumstances. Furthermore, a judge later upheld the
13 finding of probable cause when issuing a warrant.

14 Plaintiffs also make much of two mistakes of fact made by defendants. First, the
15 officers did not make certain that Dyleski was actually at the Curiel house at the time it was
16 searched, and Dyleski was not there at the time. Given that defendants had learned that Dyleski
17 lived at the Curiel house with his mother, it was reasonable for them to go there to look for him
18 as well as for evidence connected to the crimes. Indeed, it is hard to say exactly how
19 defendants could have made certain that Dyleski would be at the house without alerting him to
20 their presence, potentially causing him to flee. Additionally, they were provided with no other
21 address where he could be until they spoke with plaintiffs that evening. Second, the people
22 defendants saw running toward the back of the house were actually small young girls.
23 Although defendants may have been able to see through the windows, defendants could not tell
24 precisely who was running through the house. Accordingly, it was reasonable under the
25 circumstances for the officers to conclude that waiting for the occupants to open the door was
26 futile and that they had been detected.

27 This order has determined that, viewing the evidence in the light most favorable to
28 plaintiffs, Sikkema’s Fourth Amendment rights were violated when the officers took him in for

1 questioning at the Field Operations Bureau. Defendants contend that the law forming the basis
2 of the violation was not clearly established in view of *Muehler v. Mena*, 544 U.S. 93, 100–01
3 (2005). Specifically, defendants argue that a reasonable officer would not have thought that
4 ordering a lawfully detained person to go to a station house would not be any more intrusive or
5 coercive than questioning them in a home. Here, it would seem that transporting someone to a
6 station house against their will is entirely a different matter than questioning them in their
7 home. Even though Sikkema was not a suspect, the officers effectively upped the ante by
8 transporting him out of his home against his will. Accordingly, qualified immunity is not
9 appropriate on this issue. Defendants’ motion for summary judgment is **GRANTED IN PART**
10 **AND DENIED IN PART.**

11 3. *MONELL CLAIMS.*

12 Municipalities and local governments can be sued directly for violations of
13 constitutional rights under 42 U.S.C. 1983 where government officials were acting pursuant to
14 an official policy or recognized custom. *Monell v. Dept. of Social Serv. of New York*, 436 U.S.
15 658, 690 (1978). The plaintiff must identify the policy or custom which caused the violation.
16 “The plaintiff must also demonstrate that, through its *deliberate* conduct, the municipality was
17 the ‘moving force’ behind the conduct alleged. That is, a plaintiff must show that the municipal
18 action was taken with the requisite degree of culpability and must demonstrate a direct causal
19 link between the municipal action and the deprivation of federal rights.” *Bd. of County*
20 *Comm’rs of Bryan County v. Brown*, 520 U.S. 397, 404 (1997) (emphasis in original).

21 Defendants argue only that there was no violation of plaintiffs’ constitutional rights on
22 which a *Monell* claim could be based, reserving any other arguments for a later motion if
23 necessary. Neither party addressed the issue of custom or policy. This order has granted
24 summary judgment as to all of plaintiffs’ alleged Fourth Amendment violations except the
25 transport of Sikkema to the station house, thus that alleged violation could still form the basis of
26 a *Monell* claim. Accordingly, defendants’ motion for summary judgment as to the *Monell* claim
27 is **GRANTED IN PART AND DENIED IN PART.**

28

1 **4. RUPF IN HIS INDIVIDUAL CAPACITY.**

2 Defendants argue that all claims against Contra Costa County Sheriff Mark Rupf in his
3 individual capacity must be dismissed for plaintiffs' failure to present any evidence of his
4 involvement in the seizure or search at issue here. "Supervisory liability is imposed against a
5 supervisory official in his individual capacity for his own culpable action or inaction in the
6 training, supervision, or control of his subordinates, for his acquiescence in the constitutional
7 deprivation of which the complaint is made, or for conduct that showed a reckless or callous
8 indifference to the rights of others. *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir.
9 1991) (internal quotations and citations omitted). Summary judgment is appropriate when
10 plaintiffs have presented no evidence of such involvement in constitutional deprivations by
11 defendants. *Menotti v. City of Seattle*, 409 F.3d 1113, 1149 (9th Cir. 2005). Plaintiffs have
12 come forward with no evidence or theory of how Rupf was involved in the search or seizure.
13 Accordingly, defendants' motion for summary judgment as to this claim is **GRANTED**. This
14 order need not reach the issue of whether Rupf is entitled to immunity as a state official under
15 the Eleventh Amendment.

16 **5. STATE-LAW CLAIMS.**

17 Plaintiffs also bring state-law claims for trespass, false imprisonment, assault, battery,
18 intentional infliction of emotional distress, negligent infliction of emotional distress, and
19 violation of California Civil Code § 52.1 against defendants. Defendants move for summary
20 judgment arguing that plaintiffs have failed to show triable issues of fact and that these claims
21 are barred by immunities afforded by the California's Government Tort Liability Act.

22 **A. Immunity Under California Government Code § 821.6.**

23 Defendants contend that they are immune from state-law liability. "A public employee
24 is not liable for injury caused by his instituting or prosecuting any judicial or administrative
25 proceeding within the scope of his employment, even if he acts maliciously and without
26 probable cause." Cal. Gov. Code § 821.6.

27 Two other code sections govern the scope of public officers' liability for common-law
28 torts under California law. *First*, California Government Code § 815.2(a) provides:

1 A public entity is liable for injury proximately caused by an act or
2 omission of an employee of the public entity within the scope of
3 his employment if the act or omission would, apart from this
section, have given rise to a cause of action against that employee
or his personal representative.

4 *Second*, California Government Code § 820(a) provides that “[e]xcept as otherwise provided by
5 statute . . . a public employee is liable for injury caused by his act or omission to the same
6 extent as a private person.” Accordingly, the California Court of Appeal has explained that this
7 statutory framework establishes two principles:

8 (1) unless they are granted specific statutory immunity, a public
9 entity and its employees are liable in tort for the same causes of
action that could be brought against a private person; and
10 (2) absent a statute specifically imposing liability, a public entity
and its employees are not liable for causes of action in tort that
11 could not be pursued against a private party.

12 *Lueter v. California*, 94 Cal. App. 4th 1285, 1300 (2002). Furthermore, “California law denies
13 immunity to police officers who use excessive force in arresting a suspect.” *Robinson v. Solano*
14 *County*, 278 F.3d 1007, 1016 (9th Cir. 2002) (en banc). Immunity also does not extend to false
15 arrest and false imprisonment claims. Cal. Gov. Code § 820.4; *Asgari v. City of Los Angeles*,
16 15 Cal. 4th 744, 752 (1997).

17 Accordingly, defendants’ contention that plaintiffs are immune from suit for false arrest
18 and other torts flowing therefrom is incorrect. To the extent that plaintiffs’ emotional distress
19 claims are based on false arrest they survive. The immunity does, however, apply to emotional
20 distress claims arising out of criminal investigations and prosecutions. *Amylou R. v. County of*
21 *Riverside*, 28 Cal. App. 4th 1205, 1209–10 (1994). Thus, defendants’ motion for summary
22 judgment is **GRANTED** as to plaintiffs’ claims for intentional infliction of emotional distress and
23 negligent infliction of emotional distress to the extent they are based on defendants’
investigative activities.

24 **B. False Arrest, Assault and Battery Claims.**

25 If an arrest or imprisonment is privileged by law, the person affecting the arrest or
26 imprisonment is not liable for false arrest or imprisonment. *See Asgari*, 15 Cal. 4th at 757. To
27 prevail on a claim for battery against a police officer, the plaintiff must establish that the officer
28 used excessive force against him or her. *Edson v. City of Anaheim*, 63 Cal. App. 4th 1269, 1273

1 (1998). California law uses the same standard of reasonableness as is used under the Fourth
2 Amendment. *See Saman v. Robbins*, 173 F.3d 1150, 1157 n.6 (9th Cir. 1999). Because this
3 order has already found that entry into the Curiel house was privileged under law, and that the
4 degree of force used by the officers was reasonable, there are no triable issues of fact left in
5 these state-law claims. Accordingly, defendants' motion for summary judgment is **GRANTED** as
6 to plaintiffs' claims for assault, battery and false imprisonment. These claims must be
7 dismissed.

8 **C. California Civil Code § 52.1.**


9 California Civil Code § 52.1 prohibits interference with the exercise and enjoyment
10 rights secured by the federal government. Plaintiffs allege that defendants violated their rights
11 under the Fourth Amendment, however, defendants have shown that there are no triable issues
12 of fact as to those claims, except as to Sikkema. Accordingly, all other plaintiffs cannot
13 maintain a claim under § 52.1 because they cannot show that their federal constitutional rights
14 were violated. Sikkema's claim still survives to the extent that it is based on his transport to the
15 Field Operations Bureau. Defendants' motion for summary judgment is **GRANTED IN PART**
16 **AND DENIED IN PART** for plaintiffs' claim under § 52.1.

17 **CONCLUSION**

18 For all the above-stated reasons, defendants' motion for summary judgment as to
19 plaintiffs' claims for violation of 42 U.S.C. 1983, assault, battery, false imprisonment,
20 intentional infliction of emotional distress, negligent infliction of emotional distress, and
21 violation of California Civil Code § 52.1 is **GRANTED IN PART AND DENIED IN PART**.

22
23 **IT IS SO ORDERED.**

24 Dated: August 13, 2007.

25 
26 _____
27 WILLIAM ALSUP
28 UNITED STATES DISTRICT JUDGE