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To: All Sheriffs & Chiefs of Police

From: James R. Touchstone, Esq.

DEFENDANT WAS NOT DETAINED WITHIN THE MEANING OF THE FOURTH AMENDMENT BECAUSE A REASONABLE PERSON WOULD VIEW THE DEPUTY'S USE OF A SPOTLIGHT LACKING IN COERCIVE FORCE

The California Supreme Court, in *People v. Tacardon*,¹ concluded that shining a spotlight for illumination does not ipso facto constitute a detention under the Fourth Amendment. The Court explained that the proper inquiry instead requires consideration of the totality of the circumstances, including the use of a spotlight.

Background

Sheriff's Deputy Joel Grubb was on patrol in a marked car at night in a residential Stockton neighborhood. The area was known for narcotics sales and weapons possession. He drove past a BMW legally parked in front of a residence, in the vicinity of a streetlight. The car's engine and headlights were off; smoke emanated from slightly open windows. He saw three people inside and made eye contact with the

occupants as he drove past them. Grubb made a U-turn, parked about 15 to 20 feet behind the BMW, and turned on his spotlight. He did not activate his siren or emergency lights or issue any commands to the car's occupants. He sat in his patrol car for 15 to 20 seconds. He then approached the BMW at a walking pace. He did not draw a weapon. A woman "jumped out" of the BMW from the backseat, closed the door behind her, and walked towards the back of the vehicle. The woman complied with the deputy's direction to stand near the sidewalk behind the BMW. The deputy spoke in a calm and moderate voice and did not draw a weapon. Deputy Grubb continued approaching the car.

As the deputy came within a few feet of the BMW, he smelled marijuana smoke coming from inside. He saw clear plastic bags on the rear passenger floorboard containing a green leafy substance. Defendant Leon

¹ 2022 Cal. LEXIS 7809 (Dec. 29, 2022).

William Tacardon sat in the driver's seat. During a two or three minute discussion, Tacardon said he was on probation. A records search confirmed that Tacardon was on probation with a search condition. After other officers arrived, Deputy Grubb placed Tacardon in the back of the patrol car. The deputy searched the BMW and seized the bags, which contained 696 grams of marijuana, and a vial of 76 hydrocodone pills.

Tacardon was charged with possession for sale of hydrocodone and marijuana. At the preliminary hearing, Deputy Grubb testified to the facts above. Tacardon's motion to suppress the evidence at that hearing was denied by the magistrate. Tacardon renewed his motion to suppress in conjunction with a motion to dismiss the information. The superior court granted the motion and dismissed the charges. The superior court held that Deputy Grubb engaged in a consensual encounter when he initially pulled behind Tacardon's car and turned on his spotlight. But his detention of the female passenger effectuated a detention of Tacardon.

The Court of Appeal reversed, though it agreed with the superior court that Grubb's position behind Tacardon's car, spotlight illumination, and approach on foot did not manifest a sufficient show of police authority to constitute a detention. However, the Court of Appeal rejected the superior court's conclusion that Grubb's interaction with the female passenger transformed the encounter with Tacardon into a detention. The appellate court reasoned that there was no evidence that Tacardon observed the deputy's interaction

with the passenger, or that the deputy conveyed to defendant that he, like his passenger, was required to remain. The Supreme Court of California granted review to examine the significance of the deputy's use of a spotlight in this circumstance.

Discussion

The Supreme Court explained that police officers can approach people on the street and engage them in consensual conversation. (*People v. Brown* (2015) 61 Cal.4th 968, 974.) "However, 'when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen,' the officer effects a seizure of that person, which must be justified under the Fourth Amendment to the United States Constitution. [Citations.] In situations involving a show of authority, a person is seized 'if "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave,"' or "'otherwise terminate the encounter"' [citation], and if the person actually submits to the show of authority." (*Id.*)

The Supreme Court explained that courts consider the totality of the circumstances in determining whether a detention occurred. Relevant circumstances may include: the presence of multiple officers, an officer's display of a weapon, the use of siren or overhead emergency lights, physically touching the person, the use of a patrol car to block movement, or the use of language or of a tone of voice indicating that compliance with the officer's request is compelled. (*Michigan v. Chesternut* (1988) 486 U.S. 567, 575; *In re Manuel G.* (1997)

16 Cal.4th 805, 821.)

The Court explained that the outcome here hinged on the distinction between a consensual encounter and a detention. The Court noted that Deputy Grubb did not stop the BMW, as it was already parked on the street when he saw it. The parties agreed that Deputy Grubb had no reasonable suspicion of criminal activity before he smelled marijuana smoke and saw what appeared to be bags of marijuana in the backseat. Thus, if Tacardon was detained before that point, the action was unjustified and evidence subsequently discovered during the deputy's search was subject to suppression. (*Terry v. Ohio* (1968) 392 U.S. 1, 12, 15, 21–22.)

In *Brown*, a deputy responded, using lights and siren, to a call reporting a fight in an alley and talk of a loaded gun. The deputy saw a car leaving the reported location in the opposite direction from the deputy's approaching patrol car. Pursuing, the deputy later spotted the car parked nearby, stopped behind it and activated the patrol car's colored emergency lights. The deputy approached and spoke to Brown, whom he arrested for driving under the influence. The *Brown* court concluded that Brown was detained when the deputy stopped behind his parked car and turned on the patrol car's overhead emergency lights. *Brown* concluded that, under the circumstances presented, a reasonable person in Brown's position would have perceived the deputy's actions as a show of authority, directed at him and requiring that he submit by remaining where he was. The Supreme Court here noted, however, that *Brown* did not adopt a bright line rule that "an officer's

use of emergency lights in close proximity to a parked car will always constitute a detention of the occupants." (*Brown, supra*, 61 Cal.4th at p. 980.) Instead, the *Brown* court emphasized such an inquiry "must take into account "all of the circumstances surrounding the incident" in each individual case." (*Ibid.*) The case here involved the use of a spotlight, rather than red and blue emergency lights, and the Court accordingly considered how the use of a spotlight affected the analysis of whether a detention took place.

In *People v. Kidd* (4th Dist. 2019) 36 Cal.App.5th 12, which had facts like those presented here, the Fourth District held the defendant was detained without reasonable suspicion "as soon as the officer pulled in behind him and turned his spotlights on him." (*Id.*, at p. 22.) The officer in *Kidd* did not block the car, activate emergency lights, or approach in an aggressive or intimidating manner. The court nonetheless concluded that the defendant was detained under the totality of the circumstances. *Kidd* concluded that a reasonable person would not feel free to leave when an officer pulls in behind the person's parked car and turns on the patrol car's lights, "[r]egardless of the color of the lights the officer turned on" (*Id.*, at p. 21). The Supreme Court here declared that *Kidd* thus described the use of a spotlight in this circumstance as essentially indistinguishable from the activation of red and blue emergency lights.

The Supreme Court disagreed, explaining that the use of a spotlight generally conveys a different meaning to a reasonable person than the use of a patrol car's emergency lights. Red and blue lights are almost

exclusively reserved for emergency and police vehicles. An officer's use of flashing red lights, or combination of red and blue lights, behind a vehicle typically conveys a command to stop. Moreover, the Court explained, "a reasonable person would understand that spotlights can have a practical function that differs from the essentially communicative function of emergency lights. A spotlight can be used to illuminate the surrounding area for safety or other purposes unrelated to the projection of authority."

However, as in *Brown*, the Supreme Court again declined to state a bright-line rule. The Court stated that the proper inquiry requires consideration of the totality of the circumstances, including the use of a spotlight. While it was clearly possible that the facts of a particular case could show a spotlight was used in an authoritative manner, the use of a spotlight, standing alone, did not necessarily effect a detention under the Fourth Amendment.

Considering the circumstances here, the Supreme Court concluded that Tacardon was not detained when Deputy Grubb parked behind the BMW, shined a spotlight on it, and began to approach on foot. The spotlight was used as a matter of course and was not unusually bright or flashing. Further, the deputy did not stop Tacardon's vehicle or block him from driving away, did not activate a siren or emergency lights or give directions by loudspeaker, did not approach rapidly or aggressively on foot or draw a weapon, gave no commands, and made no demands. The female passenger was detained only after she got out of the car and started to walk away, the deputy

directed her to remain, and the passenger complied. Whether Tacardon was detained when Deputy Grubb detained the passenger depended on whether Tacardon perceived the interaction, but the magistrate did not consider that question.

Tacardon argued that he was clearly the focus of the deputy's "official scrutiny" when the deputy made eye contact, turned the patrol car around, parked behind the BMW, activated his spotlight, and began walking towards the car. According to Tacardon, he "knew he was engaged in an encounter with the authorities even before the deputy approached the car on foot and was well aware of the light glaring immediately behind his car." The Court stated that under Tacardon's proposed rule, any person who is aware of police scrutiny and is then illuminated by a spotlight is necessarily detained. The Court explained that the high court has long held an officer's mere approach does not constitute a seizure. (*Florida v. Bostick* (1991) 501 U.S. 429, 434; *Chestnut*, *supra*, 486 U.S. at pp. 575–576.) While a reasonable person in Tacardon's position might "feel himself the object of official scrutiny, such directed scrutiny does not amount to a detention." (*People v. Perez* (6th Dist. 1989) 211 Cal.App.3d 1492, 1496.)

Tacardon also contended that Deputy Grubb's detention of the female passenger who got out of the car effectively communicated to Tacardon that he also was not free to leave. The Court explained that while an officer's show of authority towards others can communicate that the defendant is also not free to leave or terminate the encounter, the defendant must be aware of

the officer's show of authority directed at another. However, the record here showed that the magistrate did not consider the critical factual question of whether Tacardon overheard or otherwise perceived the deputy's interaction with the female passenger. The Court determined that because an individual may be detained as a result of a police officer's directives to another person (*Brendlin v. California* (2007) 551 U.S. 249, 260), the magistrate erred by failing to consider whether the deputy's interaction with Tacardon's passenger, together with all the other relevant circumstances, effected a detention of Tacardon as well. The Court found that unlike in *Brown*, the record here supported conflicting inferences on the issue of Tacardon's awareness.

The Supreme Court accordingly reversed the judgement of the Court of Appeal and remanded the matter for a new factual finding as to whether Tacardon was aware of the woman's detention and to assess whether Tacardon was detained under the totality of the circumstances.

Judge Groban dissented, noting that the majority concluded that "Tacardon was not detained when Deputy Grubb parked behind the BMW, shined a spotlight on it, and began to approach on foot." Judge Groban thought it was a close question whether under the facts here, Tacardon was detained. Judge Groban maintained that the superior court should assess the totality of relevant facts rather than the Supreme Court making a determination here with respect to only some of them.

Judge Liu also dissented, believing that at

the point after Deputy Grubb parked behind the BMW, shined a spotlight on it, and began to approach on foot, an ordinary citizen in Tacardon's position would not feel at liberty to simply walk [or drive] away from the officer. Judge Liu would have held that Tacardon was detained without reasonable suspicion in violation of the Fourth Amendment and that the judgment of the Court of Appeal must be reversed, and the information dismissed.

HOW THIS AFFECTS YOUR AGENCY

Agencies may observe that the issue of whether the defendant here was aware of the officer's show of authority directed at the female passenger who had exited the car remains undecided. It is possible that the superior court's assessment on remand on the question of the defendant's awareness as part of the totality of circumstances could yield a different answer on the question of whether the defendant was detained.

As always, if you want to discuss any of this in greater detail, do not hesitate to contact James Touchstone at jrt@jones-mayer.com or by telephone at (714) 446-1400.

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