

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE

IN RE JAMAR D., a Person Coming Under
the Juvenile Court Law.

Court of Appeal
No. D076462

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Superior Court
No. J242137

Petitioner and Respondent,

v.

JAMAR D.,
(Minor) Objector and Appellant.

APPEAL FROM THE JUDGMENT OF
THE SUPERIOR COURT OF SAN DIEGO COUNTY
THE HONORABLE BROWDER WILLIS, JUDGE PRESIDING

APPELLANT'S OPENING BRIEF

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By appointment of the Court of Appeal
Under the Appellate Defenders, Inc.
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STATEMENT OF APPEALABILITY

This appeal is from a judgment entered pursuant to Welfare and Institutions Code section 602 and is authorized by Welfare and Institutions Code section 800.

STATEMENT OF THE CASE

On August 16, 2019, an amended juvenile wardship petition was filed pursuant to Welfare and Institutions Code section 602, alleging that, on or about March 13, 2019, appellant, Jamar D., committed robbery (count 1; Pen. Code, § 211), assault by means likely to produce great bodily injury (count 2; Pen. Code, § 245, subd. (a)(4)), unlawfully possessed a firearm (count 3; Pen. Code § 29610), received or concealed stolen property (count 4; Pen. Code, § 496, subd. (a)), unlawfully carried a concealed firearm within a vehicle (count 5; Pen. Code, § 25400, subd. (a)(1)), unlawfully carried a loaded firearm in a public place (count 6; Pen. Code, § 25850, subd. (a)), and unlawfully possessed live ammunition (count 7; Pen. Code, § 29650). (1CT 120-121.)

As to counts 1 and 2, it was alleged appellant committed the offenses for the benefit of a criminal street gang, within the meaning of Penal Code section 186.22, subdivision (b)(1). As to count 1, it was further alleged that a principal personally used a firearm within the meaning of Penal Code section 12022.53, subdivisions (b) and (e)(1). (1CT 120.) Minors E.J. and D.W. were also charged with the same offenses. (1CT 2.)

On April 3, 2019, appellant filed a motion to suppress. (1CT 20-24.) The prosecution filed an opposition to the motion to suppress on April 18th. (1CT 25-39.) On May 6, 2019, a hearing was held with all three minors and their counsel present and the court denied the motion to suppress. (1CT 55-56; 3RT 396-397.)

On August 19, 2019, appellant admitted count 1 and the gang and firearm allegations and the remaining counts and allegations were dismissed. (1CT 189; 10RT 1708-1709.)

On September 9, 2019, appellant was adjudged a ward of the court pursuant to Welfare and Institutions Code section 602. Execution of a camp commitment was ordered stayed and appellant was placed on probation. (1CT 195-197; 12RT 2112-2114, 2116.)

A timely notice of appeal was filed on September 10, 2019. (1CT 154-155.)

STATEMENT OF FACTS

Appellant admitted that on March 13, 2019, he unlawfully, by means of force and fear, took personal property from the person, possession, and immediate presence of another in violation of Penal Code section 211. (10RT 1708.) He further

admitted he committed the offense for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further, and assist with criminal conduct by gang members within the meaning of Penal Code section 186.22, subdivision (b)(1), and that a principal personally used a firearm within the meaning of Penal Code section 12022.53, subdivisions (b) and (e)(1). (1CT 189; 10RT 1709.)

ARGUMENT

I. THE JUVENILE COURT ERRED IN DENYING THE MOTION TO SUPPRESS BECAUSE APPELLANT WAS UNLAWFULLY DETAINED IN VIOLATION OF HIS FOURTH AMENDMENT RIGHTS

A. Introduction

Appellant was sitting in a parked car along with two other minors when officers surrounded the exits of the car and began issuing orders to roll down the window, stop using their phones, and provide their identifications. Contrary to the juvenile court's conclusion, the facts do not support a finding that this was merely a consensual encounter. Moreover, the officers provided no articulable facts or reasonable suspicion justifying the stop and detention of the minors. Instead, the officers stated the reason they initially approached the car was because a citizen informed them there were black males in the car acting "shady." While the prosecution later attempted to argue it was a valid probation stop based on one of the minor's Fourth Amendment waiver, there was no substantial evidence supporting that was the reason for the stop or that the officers had knowledge of the minor's status prior to the stop, nor was there any evidence

supporting a claim that the detention was valid based on any Vehicle Code violation or drug offenses. As the evidence was obtained as a result of an unlawful detention, the motion to suppress should have been granted and appellant should be given the opportunity to withdraw his admission.

B. The Hearing on the Motion to Suppress

1. Evidence Presented at the Hearing

On March 13, 2019, around 6:15 p.m., Amalia Sidhu was conducting surveillance on E.J., in the area of 65th Street and Brooklyn Avenue, in San Diego. (3RT 311-312.) Sidhu had looked up E.J.'s probation status, at some point, and learned he was on felony probation for pimping and had a current Fourth Amendment waiver. (3RT 315.) Sidhu had seen E.J. in a black Mercedes near Lincoln High School a few hours earlier and believed he was still in that same car. (3RT 312-313, 333-334.) Sidhu was in an unmarked police car, when she saw the black Mercedes stopped in the middle of the street facing eastbound on Broadway, obstructing the thoroughfare, in violation of the Vehicle Code. (3RT 313, 316-617.) Two individuals got out of the front and back passenger side and the Mercedes continued and parked on Hilger Street.¹ (3RT 313, 315.)

Officer Jerrad Schnautz was assisting detectives with surveillance, but was stopped on Madera Street dealing with an

¹ Sidhu's reports did not mention seeing E.J. in the car earlier that day, nor did it state that she witnessed a Vehicle Code violation, knew E.J. had a Fourth Amendment waiver, or that she provided that information to other officers. (3RT 327-328, 332, 336.)

unrelated matter, when a female driver approached him and said, she lived on the 1200 block of Hilger Street and there was a black Mercedes stopped on the street, it was occupied by black males, and they were “acting shady.” (3RT 342.) The woman did not elaborate on what she meant, but Schnautz knew it to be a high crime area, known for gang sets, narcotics, prostitution, burglaries, and stolen vehicles, and interpreted it to mean they were possibly casing cars, looking to commit a burglary, looking to commit a violent act against gang rivals, or “could be in the area for any unknown reasons.” (3RT 342, 350.) Based on what the woman said, Schnautz and his partner decided to make contact with the occupants of the vehicle. (3RT 345.) As part of the surveillance he was involved in, Schnautz believed it was possible that E.J. was in the Mercedes and he had been told E.J. had an active Fourth Amendment waiver and would probably be in the driver’s seat.² (3RT 342, 345-346.) However, Schnautz was not informed or provided with a license plate number for the car. (3RT 363-364.)

Schnautz and other officers pulled up to the black Mercedes, which was legally parked on the side of the street, and contacted E.J., D.W., and appellant. (3RT 350, 354-355, 356, 371.) They arrived in two police SUVs with their lights activated. (3RT 329.) Schnautz approached the car along with officers Williams, Euler, and Short. (3RT 369; 1CT 41-52; People’s

² Sidhu testified she communicated with officer Schnautz and other officers and informed them E.J. was driving the Mercedes and had a Fourth Amendment waiver. (3RT 313-315, 318, 323, 331.)

Exhibit 1.) Schnautz did not run the license plate. (3RT 366.) The officers positioned themselves around the car to prevent them from leaving, with Euler on the passenger-side, Short on the back-passenger side, Williams on the front-driver's side, and Schnautz on the back-driver's side. (3RT 369.) The officers gave commands to roll down the windows, stay off their phones, and to give them their IDs or driver's licenses and provide their names, addresses, and birthdays. (1CT 42-43.)

E.J. initially provided a different name but then provided his real name and admitted he was on probation. (1CT 43-44, 46.) Schnautz testified he went to the patrol car and performed a record check on E.J., even though he was told E.J. was on probation, because he had not looked into it personally and for his own personal knowledge he needed to know before he asked him to get out of the car and performed a Fourth Amendment waiver check on the vehicle and on his person. (3RT 351.) Schnautz learned E.J. was, in fact, on probation with a Fourth Amendment waiver. He did not recall appellant being on any type of probation. (3RT 352.)

The car was searched and a firearm was found under the driver's seat and all three minors were arrested. (3RT 356-357.) A pair of sneakers, later learned to be evidence in a robbery, was also found in the car, along with a clear white canister with what appeared to be marijuana inside of it. (3RT 355, 359-360.)

2. Arguments

The prosecutor argued there were four separate and independent reasons for the contact. First, he claimed it was a

“straight-up Fourth waiver probation search” because the officers knew E.J. was on a Fourth waiver, knew he was in the car, and knew he was in a location which was rival gang territory for him.³ Thus, the prosecutor claimed it was a “probationary Fourth waiver search, as very pure and at its core.” (3RT 386.) He argued that after that, there were no other issues as a gun was found during the probationary search, all three were arrested for the gun, and everything else was incident to arrest. (3RT 386.) Secondly, the prosecutor claimed it was a valid stop because Sidhu saw the car on 65th and Broadway blocking the lane of travel, which is a Vehicle Code violation. (3RT 386-387.) Third, the prosecution claimed there was reasonable suspicion because the officers knew who E.J. was, knew he was on probation, knew where he was, and a civilian had approached officers and described him as being “shady.” (3RT 387.) Finally, the prosecutor argued that marijuana was on the passenger seat and all of passengers in the car were minors under 21 years old and that by itself provided reasonable suspicion to search the car. (3RT 388.)

Counsel for E.J. argued that what was important was what the officers who actually detained the minors knew. Therefore, any argument about the earlier Vehicle Code violation which was not witnessed by those officers had no bearing. (3RT 389.) Counsel further argued that “shady” could mean a number of things and there was no evidence, testimony, or statements

³ The prosecutor attempted to admit evidence that E.J. was a Lincoln Park gang member, but the court found it was irrelevant for the purpose of the suppression motion. (3RT 310-311.)

supporting articulable facts that a crime had or was about to occur. (3RT 390.) Instead, the officers drove up in two police cars with lights on, pulled behind the Mercedes, did not run a license plate check, and had no idea who was actually in the vehicle. (3RT 390.) The officers then swarmed the car and began giving commands. (3RT 391.) Counsel argued there was nothing consensual about the encounter and under *People v. Brown* (2015) 61 Cal.4th 968, it was a de facto detention. (3RT 390-391.) Furthermore, counsel argued it was telling that the officers did not know who E.J. was or whether he was even in the car. (3RT 391.) The officers stumbled on his name and then had to go back to the car to conduct a record check before they knew for sure who he was and that he was on probation. Counsel argued that under *In re Jamie P.* (2006) 40 Cal.4th 128, the officers must know the person they are stopping is on probation with a Fourth Amendment waiver in order for it to be a valid stop. (3RT 391.)

The court questioned, “Where was the stop?” and E.J.’s counsel replied that it was when the officers pulled up with the lights on behind the vehicle. (3RT 391.) The court disagreed and responded it was a consensual encounter because the car was sitting on the side of the road, a citizen said something “shady” was going on, and the public had the right to expect the police to investigate. (3RT 391-392.) Counsel contended that a reasonable person would not have felt free to leave and noted four officers surrounded each exit so no one could exit, and Schnautz specifically agreed that was the whole point of how they approached and positioned themselves around the vehicle. (3RT

392.) E.J.'s counsel reiterated it was a de facto unlawful detention, there were insufficient articulable facts or reasonable suspicion, and thus, the evidence should be suppressed. (3RT 392-393.) Counsel for D.W. joined and argued it was clearly a detention and they were not free to go. (3RT 393.)

Appellant's counsel also joined in the arguments by E.J.'s counsel and further noted, that if it was a clear and simple probation search based on E.J.'s Fourth Amendment waiver, there would have been evidence supporting prior knowledge of the waiver. (3RT 393-394.) However, it was not in William's, Short's, or Sidhu's report and there is no credible information that there was knowledge that he was on probation with a Fourth Amendment waiver prior to the stop. (3RT 394.)

3. The Juvenile Court's Ruling

The court found the officers had a right to be at the vehicle after a citizen said something "shady" was going on. The court agreed that "shady" did not rise to the level of criminal behavior but it entitled the officers to be at the location where they ultimately contacted the minors. (3RT 395.) The court further stated not all consensual encounters are elevated to a detention simply because there are officers that outnumber the individuals in the car. The court noted that under the law it was still required to take factors into consideration that established whether or not there was a show of authority that would overcome the free will of the subject to the encounter. (3RT 396.) However, the court found there was no excessive show of authority and four officers at each door establishing their

presence was still a consensual contact, where the officers were entitled to knock on the window, ask their names, obtain identification, and do warrant checks. The court further concluded that once it was determined that E.J. was on probation, it became straightforward and the evidence was legally seized. (3RT 396.) Therefore, the court denied the motion. (3RT 397.)

C. Standard of Review

Resolution of a Fourth Amendment suppression motion involves a mixed question of law and fact. (*People v. Zamudio* (2008) 43 Cal.4th 327, 342.) “In California, issues relating to the suppression of evidence derived from governmental searches and seizures are reviewed under federal constitutional standards.” (*People v. Troyer* (2011) 51 Cal.4th 599, 605; see *Robey v. Superior Court* (2013) 56 Cal.4th 1218, 1223.) When a minor moves to suppress evidence under section 700.1, “the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences, is vested in the trial court.” (*People v. Leyba* (1981) 29 Cal.3d 591, 596; *In re Gilbert R.* (1994) 25 Cal.App.4th 1121, 1124.) “On appeal all presumptions favor the exercise of that power, and the trial court’s findings on such matters, whether express or implied, must be upheld if they are supported by substantial evidence.” (*Ibid.*) As to the ultimate question, however, the appellate court exercises its “independent judgment in determining whether, on the facts presented, the search or seizure was reasonable under the Fourth Amendment.” (*People*

v. Lenart (2004) 32 Cal.4th 1107, 1119; accord *People v. Jenkins* (2000) 22 Cal.4th 900, 969; *People v. Suff* (2014) 58 Cal.4th 1013, 1053; *People v. Tully* (2012) 54 Cal.4th 952, 979.)

D. Appellant Has a Constitutional Right Against Unreasonable Searches and Seizures

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

California Constitution, Article I, section 13, contains a guarantee that is substantially identical to the Fourth Amendment.

The right to privacy is one of the fundamental rights protected against state action by the Due Process Clause of the Fourteenth Amendment. (*Mapp v. Ohio* (1961) 367 U.S. 643.) “[T]he ultimate touchstone of the Fourth Amendment is ‘reasonableness.’” (*Brigham City v. Stuart* (2006) 547 U.S. 398, 403.) “Where a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, . . . reasonableness generally requires the obtaining of a judicial warrant.” (*Vernonia School Dist. 47J v. Acton* (1995) 515 U.S. 646, 653.) A warrant ensures that the inferences to support a search are “drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.” (*Johnson v. United States* (1948) 333 U.S. 10, 14.) “In

the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement.” (*Riley v. California* (2014) 573 U.S. 373, 382.) The burden is on the prosecution to establish that an exception applies. (*Coolidge v. New Hampshire* (1971) 403 U.S. 443, 455; *People v. Schmitz* (2012) 55 Cal.4th 909, 933; *People v. Redd* (2010) 48 Cal.4th 691, 719.)

Where the accused moves to suppress evidence obtained as a result of a warrantless detention or search, the burden is on the state to justify the intrusion. (*People v. Williams* (1999) 20 Cal.4th 119, 136.) Evidence obtained in violation of the Fourth Amendment is considered fruit of the poisonous tree and must be excluded. (*Wong Sun v. United States* (1963) 371 U.S. 471, 484-485.)

E. The Juvenile Court Erred in Concluding the Initial Contact Was A Consensual Encounter, Rather than a Detention

“[C]onsensual encounters ... are those police-individual interactions which result in no restraint of an individual’s liberty whatsoever – i.e., no ‘seizure,’ however minimal – and which may properly be initiated by police officers even if they lack any ‘objective justification.’” (*Wilson v. Superior Court* (1983) 34 Cal. 3d 777, 784, citations omitted.) Then “there are what are commonly termed ‘detentions,’ seizures of an individual which are strictly limited in duration, scope and purpose, and which may be undertaken by the police ‘if there is an articulable suspicion that a person has committed or is about to commit a crime.’” (*Ibid.*, citations omitted.)

“The line between a consensual encounter which is marked by its voluntary nature, the citizen being under no compulsion to respond or remain, and a detention, which results in a restriction of freedom, is drawn upon objective grounds. If a reasonable person in appellant’s position believes in view of all the surrounding circumstances that he is not free to leave, a detention has occurred and such detention must be supported by articulable suspicion.” (*People v. Franklin* (1987) 192 Cal.App.3d 935, 940, citing *Wilson v. Superior Court, supra*, 34 Cal.3d at p. 790.)

“A seizure occurs whenever a police officer “by means of physical force or show of authority” restrains the liberty of a person to walk away.” (*People v. Celis* (2004) 33 Cal.4th 667, 673.) “[A]n officer who lacks probable cause to arrest can conduct a brief investigative detention when there is “some objective manifestation” that criminal activity is afoot and that the person to be stopped is engaged in that activity.” (*Id.* at p. 674.) “[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer’s suspicion in a short period of time. [Citations.] It is the State’s burden to demonstrate the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure.” (*People v. Soun* (1995) 34 Cal.App.4th 1499, 1516, quoting *Florida v. Royer* (1983) 460 U.S. 491, 500.)

There are myriad “objective grounds” courts rely on when determining whether a particular police-citizen encounter is consensual or a detention. Such grounds include whether the officer informed the citizen that they are not compelled to speak with the officer, whether the officers outnumber the suspects, whether the officers are armed and in uniform, whether the officers used their car’s sirens or overhead lights, whether the officers shined a light on the suspect, whether the officer asked inculpatory questions, and whether the officer’s conduct would have caused a reasonable person to understand that the officer suspected them of criminal activity. (*United States v. Mendenhall* (1980) 446 U.S. 544, 554; *Wilson v. Superior Court*, *supra*, 34 Cal.3d at p. 790-791; *People v. Roth* (1990) 219 Cal.App.3d 211, 213; *People v. Lopez* (1989) 212 Cal.App.3d 289, 292; *People v. Profit* (1986) 183 Cal.App.3d 849, 878.)

Perhaps the clearest example of a consensual encounter is where the police officer advises the citizen that they are not compelled to answer any questions but can simply leave. (See *People v. Profit*, *supra*, 183 Cal.App.3d at p. 878 [no detention where officer repeatedly told citizen that if they did not want to talk, they did not have to]; see also *People v. Derello* (1989) 211 Cal.App.3d 414, 419 [same].) The flip side is also true: the failure to advise the citizen that they do not have to speak with the officer weighs in favor of finding the encounter was a detention. (See *Florida v. Royer*, *supra*, 460 U.S. at p. 503 [detention found in part because citizen “was never informed that he was free to”

leave]; *Wilson v. Superior Court, supra*, 34 Cal.3d at p. 791 [same].)

In *Brendlin v. California* (2007) 551 U.S. 249, 251, an officer stopped a car in which Brendlin was a passenger and the court held that Brendlin, as a passenger, was seized during the traffic stop. The Court concluded that “any reasonable passenger would have understood the police officers to be exercising control to the point that no one in the car was free to depart without police permission.” (*Id.* at p. 257.) “[W]hat may amount to submission depends on what a person was doing before the show of authority: a fleeing man is not seized until he is physically overpowered, but one sitting in a chair may submit to authority by not getting up to run away. Here, Brendlin had no effective way to signal submission while the car was still moving on the roadway, but once it came to a stop he could, and apparently did, submit by staying inside.” (*Id.* at p. 262.)

In *People v. Bailey* (1985) 176 Cal.App.3d 402, an officer stopped behind the defendant’s parked car and activated his emergency lights. (*Id.* at p. 404.) The court concluded a detention had occurred because “[a] reasonable person to whom the red light from a vehicle is directed would be expected to recognize the signal to stop or otherwise be available to the officer. Any reasonable person in a similar situation would expect that if he drove off, the officer would respond by following with red light on and siren sounding in order to accomplish control of the individual.” (*Id.* at pp. 405-406.)

In *People v. Brown, supra*, 61 Cal.4th at pp. 975-977, the California Supreme Court considered the question of what differentiates a consensual encounter and a detention when an officer approaches a motorist in a parked car, and affirmed the holdings in *Bailey* and *Brendlin*. In *Brown*, an officer pulled up behind Brown’s car and activated the overhead emergency lights on the patrol car. (*People v. Brown, supra*, 61 Cal.4th at p. 973.) The Court found Brown submitted to the deputy’s show of authority by staying in his car at the scene, noting “[W]hen an individual’s submission to a show of governmental authority takes the form of passive acquiescence,” we simply consider whether, objectively, “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.” (*Id.* at p. 977, quoting *Brendlin v. California, supra*, 551 U.S. at p. 255.) The Court further noted the Supreme Court has long recognized that activating sirens or flashing lights can amount to a show of authority. (*Michigan v. Chesternut* (1988) 486 U.S. 567, 575.)

Application of these grounds to the facts of this case compels the conclusion that appellant was unlawfully detained at the time the officers approached the car he was a passenger in and that this was not a consensual encounter where a reasonable person would have felt free to leave. Here, two police SUVs pulled behind the car with their lights activated (3RT 329), and four officers approached the car and stood at each exit. (3RT 369.) Schnautz specifically agreed that the reason for

approaching the car in this manner was “to prevent anyone from leaving the vehicle.” (3RT 369.) Once the officers approached the car, they told the minors that people were saying “people are acting shady over in this car.” They commanded them to roll down the windows and ordered them to stay off their phones. (1CT 42, 46, 47.) In fact, at the very beginning of the contact, E.J. asked whether he could call his father and Williams replied, “Stay off this phone. I don’t want you to do any of that kind of stuff, okay?” (1CT 42.) Such order demonstrates that this was not a consensual encounter and that the occupants of the car were not free to do what they please or to walk away from the situation.

Under such circumstances, “any reasonable passenger [in appellant’s position] would have understood the police officers to be exercising control to the point that no one in the car was free to depart without police permission.” (*Brendlin v. California*, *supra*, 551 U.S. at p. 257.) Therefore, the juvenile court erred in concluding that this was simply a consensual encounter, rather than a stop or detention.

F. No Specific Articulate Facts Supported the Detention

As the contact was a detention, it had to be supported by reasonable suspicion. “A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.’ [Citation.] Such reasonable suspicion cannot be based solely on factors

unrelated to the defendant, such as criminal activity in the area.” (*People v. Casares* (2016) 62 Cal.4th 808, 837-838; *People v. Souza* (1994) 9 Cal.4th 224, 231.) “Reasonable suspicion must rest on objective particulars tying a particular person to criminal activity, rather than on a mere ‘hunch’ that something is odd or unusual about the person detained.” (*Cornell v. City & County of San Francisco* (2017) 17 Cal.App.5th 766, 780; *In re Tony C.* (1978) 21 Cal.3d 888, 893.) The officer must be able to articulate more than an “inchoate and unparticularized suspicion or ‘hunch’” of criminal activity. (*Terry v. Ohio* (1968) 392 U.S. 1, 27.)

Here, Schnautz could not point to any specific articulable facts that appellant and the other minors in the car may be involved in criminal activity. Schnautz explained that the reason for approaching the car was because a citizen informed him there was a black Mercedes stopped on the street, “occupied by a number of black males” and they were “acting shady.” (3RT 342.) However, Schnautz conceded the woman did not elaborate on what she meant by that. (3RT 342.) While Schnautz speculated about what “shady” might mean, he admitted it could be “for any unknown reasons.” (3RT 350.) There were no articulable facts supporting a conclusion that criminal activity may be involved. Moreover, rather than conducting their own surveillance on the individuals to see whether they noticed anything suspicious, the officers approached the car with lights on and immediately detained appellant and the other minors. In addition, when the officers approached, they did not describe seeing any furtive

movements or other behaviors suggestive of criminal activity. At the point when the officers approached the car, they had no factual basis or reasonable suspicion, as opposed to a mere hunch, that minors were then engaged in any criminal activity, and a hunch is an inadequate basis for a detention. (*People v. Wells* (2006) 38 Cal.4th 1078, 1083; *In re Tony C.* (1978) 21 Cal.3d 888, 894; see *People v. Perrusquia* (2007) 150 Cal.App.4th 228, 231-234.) The totality of the circumstances demonstrate that the detention was not based on the reasonable suspicion required by the Fourth Amendment. As the detention was unlawful, the subsequent search of the car was also unlawful.

G. No Substantial Evidence Supported the Prosecution's Claims That the Contact and Subsequent Search Were Otherwise Valid Based on E.J.'s Probationary Status and Fourth Amendment Waiver, a Vehicle Code Violation, or Marijuana Found in the Car

Finally, none of the other factors argued by the prosecution to justify the detention were supported by substantial evidence, nor were they cited by Schnautz to justify the initial contact with appellant and the other minors.

First, to the extent that the prosecution argued the stop was a pure and simple probation search and seizure based on E.J.'s probation status and Fourth Amendment waiver, none of the evidence supported this claim. Appellant acknowledges an officer who is aware of the search condition "may act reasonably in conducting a [probation] search even in the absence of a particularized suspicion of criminal activity, and such a search does not violate any expectation of privacy of the [probationer]."

(*People v. Sanders* (2003) 31 Cal.4th 318, 333.) However, an officer must have advance knowledge about an individual's probation or parole search conditions.

Here, Schnautz never indicated the reason for the stop was to conduct a Fourth Amendment probationary search. Instead, he testified they decided to make contact with the occupants of the vehicle in response to woman's comment that people were acting "shady." (3RT 345.) Moreover, none of the officers' reports note that anyone knew E.J. was on a Fourth Amendment waiver prior to making contact with the car. (3RT 394.) While Sidhu stated she had verbally told the officers of that fact, it was not in her report as a justification for the stop. (3RT 327, 328.) Moreover, Schnautz was not even certain E.J. was in that specific car at the time of the stop. Schnautz stated he did not have a license plate number (3RT 363-364) and further testified, "the only information that I had was that a *possible* occupant was [E.J]." (3RT 346, emphasis added.) In addition, Schnautz testified, "we believed he was *probably* the driver." (3RT 346, emphasis added.) In addition, in reviewing the transcript of the body-worn camera footage, it is clear that the officers did not know who E.J. was. (1CT 41-53.) Furthermore, Schnautz testified he performed a record check on all the occupants of the vehicle to "confirm their identification and check for any kind of wants, possible warrants and probation statuses" and stated that even though he was informed E.J. was in probation, "I didn't know personally, like, I hadn't performed my own personal records check. So for my own knowledge, and I need to know

before I ask him to get out of the car and perform a Fourth waiver check on the vehicle, on his person, I need to know for a fact that he's a Fourth waiver on probation." (3RT 351-352.) Thus, the record, and lack thereof, demonstrates the purpose of the initial contact was not, as the prosecution later claimed, a Fourth Amendment waiver search.

Moreover, appellant contends that once the officers confirmed who E.J. was and that he was, in fact, on probation, such fact did not cure the taint of the initial illegal detention. To determine if evidence is admissible despite a defect in the initial stop, courts examine "whether the chain of causation proceeding from the unlawful conduct has become so attenuated or has been interrupted by some intervening circumstance so as to remove the "taint" imposed upon that evidence by the original illegality." (*People v. Brendlin* (2008) 45 Cal.4th 262, 269, quoting *United States v. Crews* (1980) 445 U.S. 463, 471.) "Three factors are used to determine whether the taint of the illegal detention has been attenuated: (1) the temporal proximity of the Fourth Amendment violation to the procurement of the challenged evidence; (2) the presence of intervening circumstances; and (3) the flagrancy and purposefulness of the official misconduct. (*People v. Bates* (2013) 222 Cal.App.4th 60, 69; citing *People v. Brendlin, supra*, 45 Cal.4th at p. 269, quoting *People v. Boyer* (2006) 38 Cal.4th 412, 448.)

In *People v. Brendlin, supra*, 45 Cal.4th at pp. 265-266, officers made an unlawful traffic stop of a car and, upon discovering that a passenger had an outstanding arrest warrant,

conducted a search incident to arrest and found controlled substances. On remand from the United States Supreme Court, the California Supreme Court held that the discovery of the arrest warrant constituted an intervening circumstance that attenuated the taint of the unlawful traffic stop. (*Id.* at p. 271.)

In *People v. Durant* (2012) 205 Cal.App.4th 57, 61-62, officers stopped the defendant's car for making a turn without signally. During the stop, the officers learned the defendant was on probation and conducted a search. The defendant moved to suppress the evidence arguing the stop was unlawful. (*Id.* at pp. 61-62.) On appeal, the court agreed turning without signally was not illegal but concluded that, even assuming the traffic stop was illegal, the defendant's probation search condition attenuated any taint. (*Id.* at p. 64.) In reaching this conclusion, the *Durant* court followed the three-factor test in *Brendlin*, focusing particularly on the second factor—intervening circumstances—to find that the probation search condition was sufficient to attenuate any taint from an unlawful stop. The court also noted that the officer made the stop based on a good faith belief that the defendant's conduct was illegal and not for any “arbitrary, capricious, or harassing” reason. (*Id.* at pp. 64-66.)

In *People v. Bates*, *supra*, 222 Cal.App.4th at pp. 69-70, the court declined to adopt the reasoning in *Durant*, noting, “[t]he *Durant* court's intervening circumstances analysis proceeds on the implicit assumption that a probation search condition is the same as the arrest warrant present in *People v. Brendlin*.” The *Bates* court distinguished between the case of an arrest warrant,

where officers have a duty to arrest an individual once the outstanding warrant is confirmed, and a probation search condition, which is “a discretionary enforcement tool and therefore a less compelling intervening circumstance than an arrest warrant.” (*People v. Bates, supra*, 222 Cal.App.4th at p. 70.) Thus, the court did not read *Durant* “to stand for the proposition that discovery after the fact of a probation search condition will sanitize any unlawful detention without regard to the circumstances surrounding that seizure.” (*Ibid.*)

The court went on to say: “We are not comfortable with applying *Durant* to the facts here, as doing so would open the door to random vehicle detentions for the purpose of locating probationers having search conditions. We take no issue with the lawfulness of probation search conditions, nor with the ability of law enforcement to conduct suspicionless searches of known probationers. Our discomfort is in extending these concepts to situations where an individual’s probation status is wholly unknown to law enforcement at the time of the initial detention and is used only after the fact to justify an otherwise unlawful search.” (*People v. Bates, supra*, 222 Cal.App.4th at p. 70.)

The *Bates* court noted that the officer had stopped the defendant’s car, without any observation of possible wrongdoing. (*People v. Bates, supra*, 222 Cal.App.4th at p. 71.) Instead, the officer’s conduct was based on a hunch that the defendant might be in the vehicle. (*Ibid.*) While the court did not suggest that the officer acted in bad faith, it found “his suspicionless stop of the tan car nonetheless purposeful for our attenuation analysis.”

(*Ibid.*) Based on this finding, together with the determination that the defendant’s probation search condition was an insufficient attenuating circumstance, the court concluded the evidence was obtained as a result of the unlawful detention and search should have been suppressed. (*Ibid.*, see also *People v. Wilkins* (1986) 186 Cal.App.3d 804, 807 [concluding that the taint of illegal detention was not purged when officer first learned of probation condition during detention]; *U.S. v. Green* (7th Cir. 1997) 111 F.3d 515, 523 [“It is only in the unusual case where the police, after a questionable stop, discover that an occupant is wanted on an arrest warrant that the intervening circumstances exception will apply”].)

Here, as discussed above, there was no evidence that any of the officers who conducted the stop observed any criminal activity. Instead, they were acting on a mere hunch or hope of finding something based on a report that the occupants of the car were acting “shady.” As in *Bates*, E.J.’s probation search condition was an insufficient attenuating circumstance, and thus, the evidence obtained as a result of the unlawful detention and search and should have been suppressed.

Second, to the extent that that prosecution claimed any detention was valid based on a prior Vehicle Code violation for blocking a lane of travel, there was no evidence presented that Sidhu had ever communicated those observations to the other officers who contacted the minors and they did not report it as a reason they made contact with the vehicle. Instead, Schnautz

testified that when they approached the vehicle it was legally parked.

Finally, there was nothing to suggest that the possible presence of marijuana in the car was related to the detention. It was only in response to the prosecution's questions when playing the body-worn camera footage that the marijuana was even discussed. (3RT 355.) The prosecutor asked what the clear white canister in the video was and Schnautz replied it "looks like... a canister that individuals store marijuana in" and from the angle of the video, it looked like there was cannabis inside. (3RT 355.) While Schnautz agreed individuals under 18 years old are not allowed to possess cannabis, he never cited it as a reason for the detention or pointed to it as an articulable fact which justified the original detention.

As the totality of the circumstances demonstrate the search was conducted after an unlawful detention, the motion to suppress should have been granted.

H. Appellant Should Be Given the Opportunity to Withdraw His Admission

The appropriate remedy for the erroneous denial of a motion to suppress, followed by an appellant's plea or admission, is to reverse the conviction and give the appellant the opportunity to withdraw the plea. "Because it is impossible to assess the impact of an erroneous denial of a motion to suppress evidence on a defendant's decision to plead guilty, the harmless error rule is inapplicable..." (*People v. Ruggles* (1985) 39 Cal.3d 1, 13; accord *People v. Miller* (1983) 33 Cal.3d 545, 556.) This court should therefore reverse the judgment and remand the case

to the juvenile court, affording appellant the opportunity to withdraw his admission. (*Ibid.*)

CONCLUSION

For all the foregoing reasons, the juvenile court's denial of the motion to suppress should be reversed and appellant should be given the opportunity to withdraw his admission.

DATED: February 20, 2020 Respectfully submitted,



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WORD COUNT CERTIFICATION

I certify that this document consists of 6,625 words, typed in 13-point font, as counted by the word processing program used to generate it.



CHRISTINE M. AROS

PROOF OF SERVICE
People v. Jamar D.; D076462

I, the undersigned, declare that I am over 18 years of age, an active member of the State Bar of California, and not a party to the within cause; my business address is 2220 Otay Lakes Road, Suite 502-426, Chula Vista, CA 91915. My electronic service address is christine@cmaroslaw.com.

On February 20, 2020, I electronically submitted the attached **Appellant's Opening Brief** through this Court's TrueFiling system. In addition, I served the attached document as follows:

I mailed a true copy, in a sealed envelope, with the correct postage, through the United States Postal Service, to each of the following persons:

Jamar D.
[address confidential]

Furthermore, I electronically served each of the following persons:

Appellate Defenders, Inc., eservice-court@adi-sandiego.com
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 20, 2020, at Chula Vista, California.



CHRISTINE M. AROS