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, Petitioner and Respondent, v. **JAMAR D.**, (Minor) Objector and Appellant.	Superior Court No. J242137

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

APPELLANT'S REPLY BRIEF

CHRISTINE M. AROS
State Bar No. 265096
LAW OFFICE OF CHRISTINE M. AROS
2220 Otay Lakes Road, Suite 502-426
Chula Vista, CA 91915
(619) 483-1055
christine@cmaroslaw.com

Attorney for Appellant, Jamar D.

By appointment of the Court of Appeal
Under the Appellate Defenders, Inc.
Independent Case Program

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

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, Petitioner and Respondent, v. **JAMAR D.**, (Minor) Objector and Appellant.	Superior Court No. J242137

INTRODUCTION

This reply brief is confined to recent developments and matters addressed in respondent's brief, on which appellant believes further discussion would be helpful to this court. The absence of a point from this reply brief means only that it falls into neither of those categories. No point made in the opening brief is withdrawn or abandoned unless it is done so explicitly.

ARGUMENT

I. APPELLANT'S MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED BECAUSE THE POLICE CONTACT WAS A DETENTION WITHOUT REASONABLE SUSPICION, NOT A CONSENSUAL ENCOUNTER

In his opening brief, appellant contended the juvenile court erred in denying his motion to suppress because his contact with police was not a consensual encounter and there were no articulable facts or reasonable suspicion justifying his detention. Respondent claims the juvenile properly denied the motion to

suppress because appellant was not detained. (RB at 6, 8.) Notably, respondent acknowledges the facts also support conclusion that the encounter was, in fact, a detention. (RB at 6, 18.) However, respondent claims, even if it was a detention, it was lawful and supported by reasonable suspicion. (RB at 8.) Respondent is incorrect.

First, respondent claims the court could have reasonably concluded there was no detention because "the officers did not stop the parked car," "did not accuse anyone in the car of mischief and simply asked for identification." (RB at 8.) Respondent concedes "there certainly is *strong evidence* that a reasonable person could determine the encounter with [appellant] was a detention…" (RB at 17, 18 italics added.) However, respondent claims the facts could also support the juvenile court's conclusion that the encounter was consensual. (RB at 17.) Respondent claims such facts include: only one of the two police cars had their lights activated and the lights were to alert oncoming traffic; no guns were drawn; no verbal tones were used indicating the occupants were detained and they were not accused of any illegal activity; no threats or physical force was used by the officers; and there was no indication their identifications cards would not have simply been returned to them if they had asked for them back. (RB at 17.)

Appellant agrees with respondent's claims that no guns were drawn and no physical force was used. However, appellant disagrees that the other facts respondent cites to support a conclusion that it was simply a consensual encounter. Contrary

to respondent's claim (RB at 17, citing 3RT 329-330), there was no testimony that only one of the two police SUVs had its lights activated, nor was their testimony that the reason for activating the lights was solely to alert oncoming traffic of officers on foot. Instead, Sidhu testified that when she arrived at the scene, she saw a police SUV behind the black Mercedes with its lights activated and another SUV offset to the right. (3RT 329.) Sidhu explained this was called "contact and cover" and agreed it was to let the people know there was more than one police vehicle present and also for officer safety to make sure oncoming traffic is aware the police are there. (3RT 330.) However, such explanation had more to do with the manner in which the cars were positioned, rather than the reason for the lights being activated. Moreover, Schnautz agreed the reason the officers positioned themselves in the manner they did once they got out of their patrol cars was "to prevent anyone from leaving." (3RT 369.)

In addition, appellant disagrees with respondent's claims that the officers did not accuse the minors of illegal activity or use verbal tones indicating the occupants were detained. (RB at 17.) The officers told the minors they were there because people were saying there were people in the car acting "shady" and gave the minors commands to roll down the windows, to stay off their phones, and hand over their IDs or driver's licenses, and provide their names, addresses, and birthdays. (1CT 42-46.) Orders, such as, "Stay off this phone. I don't want you to do any of that kind of stuff, okay?" (1CT 42), can hardly be viewed as a mere

consensual encounter. In addition, the officers made statements such as, "You get one chance at this. Don't lie to me." (1CT 44.) Such statements can reasonably be viewed as threatening and indicate this was not a voluntary encounter which they were free to walk away from.

Finally, contrary to respondent's claims (RB at 10, 17) it does not appear E.J. or appellant ever actually provided the officers with any identification cards. Instead, in talking to the minors, the officers discovered they did not have identification cards. (1CT 42-44.) Thus, respondent's claim, that "[t]here is no indication that had E.J. or J.D. asked the officers to return their identifications cards, they would not have" (RB at 17), is both speculative and irrelevant.

While appellant agrees that no one factor, such as the use of emergency lights, or asking for identification creates a bright-line rule supporting a finding there was a detention (RB at 17-18, citing *People v. Brown* (2015) 61 Cal.4th 968, 980 & *People v. Gonzalez* (1985) 164 Cal.App.3d 1194, 1197), here, under the totality of the circumstances, the facts warranted a finding that this was a detention, not a consensual encounter.

Appellant was sitting in a parked car along with two other minors when officers approached with their lights on, surrounded all exits of the car, and began issuing orders to roll down the window, stop using their phones, and provide their identifications. 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* (2007) 551 U.S. 249, 257.) Therefore, the juvenile court erred in concluding this was simply a consensual encounter, rather than a detention.

While respondent argues it was reasonable for the juvenile court to conclude the interaction was consensual, respondent again appears to concede it was a detention. (RB at 18.) Respondent states, "To be sure, there are facts that support a reasonable conclusion that there was, in fact, a detention." (RB at 18.) In addition, respondent agrees appellant's reaction to the officers arriving in two patrol cars with the lights on, surrounding the car, and requesting identification can be viewed as the same kind of "passive acquiescence the defendant in *Brown* exhibited. (RB at 18, citing *People v. Brown*, *supra*, 61 Cal.4th at pp. 976-977.)

However, respondent claims, even if there was a detention, reasonable suspicion, supported by articulable facts, supported the detention. (RB at 8, 18-19.) Respondent argues the articulable facts supporting the detention are: E.J. was under surveillance for gang related activity; E.J. was in rival gang territory; it was reported to the officers that E.J. was in a black Mercedes and was on probation with a Fourth Amendment waiver; and a concerned citizen made a report about "shady" activity by the occupants of the car. (RB at 8, 19.) Respondent notes that Schnautz testified, "we believed that the occupant is [E.J.], and based on that information from detectives, he's a Lincoln Park gang member, he's in a rival set neighborhood, he

could be looking to commit some kind of act of violent against any rival set gang member." (3RT 350.) Respondent claims these facts supported Schnautz's reasonable suspicion for detaining E.J. and appellant. (RB at 19-20.) Appellant disagrees and maintains the state did not meet its burden justifying the detention.

As discussed in the opening brief "'[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 did not point to any specific articulable facts indicating it was reasonable to suspect appellant and the other minors in the car were involved in criminal activity. Instead, at most, there was merely a hunch E.J. was in the car in

rival gang territory and that he may commit some sort of violent act. Moreover, the "facts" respondent relies on appear to rely on the argument that the detention was supported by and related to E.J.'s probationary status and Fourth Amendment waiver. As discussed fully in the opening brief, Schnautz never indicated the reason for the encounter was for a probationary search, nor was it noted in any of the reports that the officers knew about the Fourth Amendment waiver prior to making contact with the car and the minors. (3RT 345, 394.) In fact, Schnautz admitted he was not even certain that E.J. was in the car at the time of the encounter and stated, "the only information that I had was that a possible occupant was E.J." (3RT 346.) While Sidhu testified, she saw E.J. associated with the car, that was a few hours before the encounter and the officers did not confirm through their surveillance that it was the same car or that E.J. was still in the car. (3RT 312, 323.) At most, Sidhu could only state that she believed he was still in the black Mercedes. (3RT 313.) Thus, respondent's claim that there was reasonable suspicion because officers knew E.J. was in the car and knew he had a Fourth Amendment waiver was not supported by any specific articulable facts.

Finally, respondent cites to the citizen's report about people in the car acting "shady." (RB at 19.) Respondent notes "private citizens who report criminal activity generally have no bias or motive other than good citizenship, and therefore tend to be reliable." (RB at 19, quoting *People v. Brown*, *supra*, 61 Cal.4th at p. 982.) However, here, there was no report by the citizen of

any of "criminal activity." Instead, the person merely reported there was a black Mercedes stopped on the street, "occupied by a number of black males" and that were "acting shady." (3RT 342.) Schnautz admitted such description could have been given "for any unknown reasons." (3RT 350.) Sadly, it remains true, as highlighted by recent events, that in this day in age, black males continue to be reported to police for innocuous conduct. The juvenile court declined to delve into the issue, stating "we could go into the social justice analysis of young black men in black communities being over-policed, directly or indirectly, and discuss all manners of circumstances. But the law hasn't reached that point as of yet." (3RT 396.) However, contrary to the court's claim, it is not that the law has not reach that point, but instead, part of the problem is that the law continues to be applied in such a manner that mere reports of black males being in a car "acting shady" continues to be found sufficient by courts to justify detentions without more specific articulable facts. Indeed, here, rather than conducting their own surveillance and assessing whether the minors in the car were, in fact, acting "shady" as the citizen reported, instead the officers immediately approached the car and detained the minors.

Appellant maintains, when the officers approached the car and initiated the encounter, they had no reasonable suspicion supported by articulable facts, 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., supra*, 21 Cal.3d at p. 894; see

People v. Perrusquia (2007) 150 Cal.App.4th 228, 231-234.) The totality of the circumstances demonstrates the encounter was not consensual, but rather was a detention which was not based on the reasonable suspicion. As the detention was unlawful, the subsequent search of the car was also unlawful. Therefore, the case should be remanded to give appellant the opportunity to withdraw his plea. (*People v. Ruggles* (1985) 39 Cal.3d 1, 13; accord *People v. Miller* (1983) 33 Cal.3d 545, 556.)

CONCLUSION

For the foregoing reasons, and as expressed more fully in appellant's opening brief, 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: May 29, 2020

Respectfully submitted,

CHRISTINE M. AROS
Attorney for Appellant,
Jamar D.

WORD COUNT CERTIFICATION

I certify that this document consists of 2,206 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 May 29, 2020, I electronically submitted the attached **Appellant's Reply 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
Attorney General's Office, SDAG.Docketing@doj.ca.gov
Judge Browder Willis, Appeals.Juvenile@SDCourt.CA.Gov
Deputy Public Defender Audrey Kyu, ppd.eshare@sdcounty.ca.gov
Deputy District Attorney Jack Yeh, DA.Appellate@sdcda.org

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 29, 2020, at Chula Vista, California.

CHRISTINE M. AROS