S264219

No.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs. LEON WILLIAM TACARDON, Defendant and Petitioner.	Third District Court of Appeal Case No. C087681 (San Joaquin County Superior Case No: STKCRFER20180003729)

PETITION FOR REVIEW

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By appointment of the Court of Appeal under the Central California Appellate Program Independent Case System

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TO THE HONORABLE TANI G. CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA

Leon Tacardon respectfully petitions this court for review following the published decision of the Court of Appeal, Third Appellate District (per Robie, Acting P.J.), filed in that court on July 22, 2020. True copies of the Opinion and the order granting publication are attached hereto as Exhibit A.

ISSUES PRESENTED ON REVIEW

I. After a deputy in a patrol car approached a parked car at night from in front with the high beams on, made eye contact with the two front seat occupants, saw smoke coming out of the windows, made a U-turn, parked 15-20 feet behind the car, and turned on the spotlight with the high beams still on, would a reasonable person sitting in the driver's seat of the parked car have felt free to leave?

II. After a deputy in a patrol car approached a parked car at night from in front with the high beams on, made eye contact with the two front seat occupants, saw smoke coming out of the windows, made a U-turn, parked 15-20 feet behind the car, turned on the spotlight with the high beams still on, and began approaching the parked car as soon as possible after alerting dispatch, would a reasonable person sitting in the driver's seat have felt free to leave?

III. After a deputy in a patrol car approached a parked car at night from in front with the high beams on, made eye contact with the two front seat occupants, saw smoke coming out of the windows, made a U-turn, parked 15-20 feet behind the car, turned on the spotlight with the high beams still on, began approaching the parked car as soon as possible after alerting dispatch, and immediately stopped the rear seat passenger who was trying to leave the car to go to her house nearby, would a reasonable person sitting in the driver's seat have felt free to leave?

NECESSITY FOR REVIEW

The Court should grant review in this case in order to secure uniformity of decision and to settle an important question of law regarding the circumstances under which the use of a spotlight to illuminate a parked car at night constitutes a detention under the Fourth Amendment. (California Rules of Court, rule 8.500(b)(1).)

The Third Appellate District in this case specifically disagreed with the Fourth Appellate District's recent analysis in holding that a suspect "'was detained when the officer made a U-turn to pull in behind him and trained spotlights on his car.'" (Opinion, Exhibit A, at pp. 11-12, quoting *People v. Kidd* (2019) 36 Cal.App.5th 12, 21.) The Court instead adopted the earlier analysis of the Sixth Appellate District, determining that though "a person whose vehicle is illuminated by police spotlights at night may well feel he or she is 'the object of official scrutiny, such directed scrutiny does not amount to a detention.'" (Opinion at p. 12, quoting *People v. Perez* (1989) 211 Cal.App.3d 1492, 1496.)

In *People v. Brown* (2015) 61 Cal.4th 968, this Court held that a suspect was detained when the deputy "stopped behind the parked car and turned on his emergency lights." (*Id.* at p. 980.) The State argued that the record did not establish whether the deputy had activated emergency or some other type of lights, including spotlights (*id.* at pp. 978-979), but the Court did not have to address the issue because the evidence demonstrated the use of emergency lights, something the Supreme Court had "long recognized ... can amount to a show of authority." (*Id.* at p. 978.) Although the Court acknowledged that these cases turn on the totality of the circumstances, "Here, no circumstances would have conveyed to a reasonable person that [the deputy] was doing anything other than effecting a detention." (*Id.* at p. 980.)

This case places the issue squarely before the Court, because there are similarly no circumstances in this case, including the use of a spotlight rather than an emergency light, that would have conveyed to Petitioner that he was free to leave, or that the officer was doing anything other than detaining him. The officer had made eye contact with Petitioner while driving past his car with the high beams on, and then made a U-turn before coming to a stop behind the car. (Opinion at p. 2.) "Regardless of the color of the lights the officer turned on" (*Kidd, supra,* 36 Cal.App.5th at p. 21), reasonable people would expect that if they drove off the officer would respond by immediately following them, or by taking more drastic action. But according to the Third Appellate District, despite the official scrutiny being directed at the occupants of the car by bathing them in light from the spotlight and the high beams, a reasonable person would have felt "free to disregard the police and go about his or her business,..." (*In re Manuel G.* (1997) 16 Cal.4th 805, 821), because the light was white instead of tinted. (Opinion at pp. 8-12.)

While older decisions like *Perez* provide some support for the Court of Appeal's decision, *Perez* simply disregarded the officer's actions before and after activating the spotlight, even though those actions can significantly increase the coercive effect of the scrutiny. (Compare *People v. Garry* (2007) 156 Cal.App.4th 1100, 1111-1112, with *Perez, supra,* 211 Cal.App.3d at p. 1496.) The Third Appellate District also discounted those circumstances, even though the officer in this case had already established eye contact with the Petitioner, began approaching the car as soon as possible after alerting dispatch, and even stopped the rear seat passenger from going to her nearby house. (Opinion at pp. 2-3, 10-12.)

Even if somewhat naive people might have hoped the officer had not meant to detain them by activating the spotlight, once the officer started to

approach the car and detained another passenger those hopes would have evaporated, because the officer's actions removed "any ambiguity" about his intention to seize everyone in that car. (*Kidd, supra,* 36 Cal.App.5th at pp. 21-22.) Only a foolhardy person would have felt free to drive away before the officer reached the car. For those reasonable people who would not believe they could leave, the Third Appellate District's decision allows officers to do what the officer did in this case – use spotlights to effectively detain people before embarking on an "expedition for evidence in the hope that something might turn up." (*Brown v. Illinois* (1975) 422 U.S. 590, 605.)

The Court should grant review.

STATEMENT OF THE CASE

The San Joaquin County District Attorney alleged in an Information filed on May 1, 2018, that Petitioner Leon Tacardon had possessed a controlled substance for sale in violation of Health and Safety Code section 11351, and had possessed marijuana for sale, a misdemeanor violation of Health and Safety Code section 11359, subdivision (b). (Clerk's Transcript on Appeal ("CT") 141-142.)

As part of his Preliminary Hearing, Tacardon moved to suppress the evidence against him pursuant to section 1538.5 (CT 7-23), but the magistrate denied the motion. (CT 24, 131-134.) Pursuant to sections 995 and 1538.5, Tacardon renewed the motion in the trial court after the filing of the Information. (CT 146-179.) The trial court subsequently granted the motion to suppress and dismissed the case (CT 180; Reporter's Transcript on Appeal ("RT") 24-25.)

The State timely appealed on July 30, 2018. (CT181.) In a published opinion issued on July 22, 2020, the Third Appellate District reversed the

superior court's order. (Opinion, Exhibit A.)

STATEMENT OF FACTS

San Joaquin County Sheriff's Deputy Joel Grubb was patrolling in a residential part of Stockton at around 8:45 in the evening on March 20, 2018. (CT 32-33, 87.) He saw a gray BMW legally parked in front of a house directly ahead of him on the east side of Fairway Drive, where two streets meet in a "T" intersection. (CT 32-33, 87-88, 104.) The car was not far from a streetlight and, per his usual practice, Grubb had his high beams on for extra visibility. (CT 87-88, 104, 115.)

Grubb noticed that two people in the front seat of the car were wearing hoodies while reclining slightly, and that they had nothing in their mouths. (CT 34, 88.) There was also a third person sitting in the back seat. (CT 33-34, 87-89.) The car did not have its lights on and was not running, but Grubb could see smoke coming of the car windows, which were slightly cracked. (CT 33, 89, 105.) The car was well lit up due to Grubb's high beams, and he was able to make eye contact with the two people in the front, who were looking at him. (CT 103-104.)

After initially turning south, Grubb made a U-turn and pulled up about 15-20 feet behind the car so he could contact the car's occupants. (CT 33-34, 88-89, 103, 104.) Grubb was driving his patrol car and wearing a uniform. (CT 107.) While Grubb did not activate his emergency lights or siren, he did turn his spotlight on to illuminate the inside of the car as soon as he got behind it. (CT 34, 89, 105.) No one inside the car flinched or made any furtive gestures when Grubb turned on the spotlight. (CT 89-90.) He advised the dispatcher where he was and got out of the car as quickly as possible, within 15 to 20 seconds, leaving the spotlight on behind him. (CT 103, 115.)

As Grubb got out of his patrol car and began to approach the car, the female passenger in the rear seat jumped or got out of the car to his right, shutting the door behind her. (CT 34, 90, 92, 93, 106, 108.) Although the passenger, M. K., told Grubb she lived at the residence where the car was parked (CT 90-91, 109), he "asked her to stay out of the vehicle, but to stay within my view and off to the side, just behind the car where I could observe her." (CT 34; see also 94, 109.)

Grubb did this as a safety precaution because he thought it was unusual for someone to get out of a car abruptly as he was approaching it; he was not trying to prevent her from going into her house, and was not acting based on a smell of marijuana, as he could not yet detect that smell. (CT 34, 90-91, 94, 106-107, 108.) Grubb just wanted to keep an eye on her while keeping the car between them in case she was armed or started to act irrationally. (CT 109-110.) He did not see anything in M.K.'s hands, did not see a bulge in her clothing that gave him concern, and did not see any threatening movements. (CT 113-114.) Grubb did not draw his gun or taser, and used a moderate voice. (CT 114-115.) M.K. complied. (CT 110.) Grubb testified that, as of that moment, neither M.K. nor the two other occupants of the car were free to leave. (CT 91, 92.)

As Grubb got closer, to within a couple feet of the driver's window, he did smell what he recognized from his training as marijuana coming through the slightly lowered front windows and the rear door, though M.K. by then had closed the door. (CT 36, 48, 91, 92, 93, 105-106, 109.) By the time he smelled the marijuana, Grubb had already told M.K. to stay by the car. (CT 94.) Grubb was able to see inside the car, though he had to use his flashlight to get a good view because the windows on the rear were tinted. (CT 34-35.) On the rear passenger floorboard, Grubb saw three large clear plastic bags containing a green leafy substance. (CT 35-36, 38.) Grubb also

saw a custom-rolled, dark brown and green cigarette in the center console, with a burnt, green, leafy substance. (CT 36-38, 96-97.)

Petitioner, who was seated in the driver's seat, identified himself, as did the other passenger, though only the other passenger produced identification. (CR 39-40, 92, 94-95, 110, 111.) They discussed the cigarette, and Petitioner said he was on probation, though Grubb did not mention that in his report, and did not say whether he was on searchable probation. (CT 96-97, 101-103.)

After his talk, Grubb went to his patrol car and conducted a records search to determine the terms and conditions of Petitioner's probation, and to confirm the identification of all three occupants. (CT 97-98.) Grubb placed Petitioner in the back of his patrol car. (CT 112-113.) During a probation search conducted about 10-15 minutes after Grubb first saw the marijuana, officers found a clear orange prescription bottle with 76 white oblong pills in a little cubby area on the rear passenger door. (CT 40-41, 45, 46, 112.) After Petitioner was placed under arrest, officers found $1,904 in cash loose in his sweat pants pocket. (CT 42, 112.) The Department of Justice confirmed that the leafy substance was marijuana and the pills were hydrocodone. (CT 49-61.)

When Petitioner moved to suppress the evidence at the preliminary hearing, the magistrate characterized the encounter as "a police contact … in other words, he didn't stop the defendant. There certainly was a point at which the defendant wasn't free to go, but that still would not preclude it being characterized as a contact." (CT 133.) The magistrate concluded the search was valid because the car was already stopped, Grubb was entitled to seize the marijuana once he saw it, and the pills were discovered during a search incident to a lawful arrest. (CT 133.)

Upon renewal of the motion, the trial court determined that the

encounter was initially consensual but that Petitioner was detained once Grubb told M.K. to stop. (RT 21-22, 24-25.) The court rejected the prosecutor's contention that M.K.'s detention had no effect on Petitioner, asking, "So you're arguing right now that if that was the situation, the defendant felt free enough to open the car door and walk away from the situation?" (RT 21.) When the prosecutor argued that M.K. felt free to do that, the court responded, "but then she was immediately detained. Doesn't that show what would happen if he got out of the car?" (RT 21.) Given Grubb's complete failure to articulate facts supporting any reasonable suspicion that Petitioner was involved in criminal activity, the court granted the motion to suppress. (RT 25.)

ARGUMENT

I. The Officer Detained Petitioner By Activating a Spotlight After He Had Driven By Petitioner's Parked Car With High Beams On, Made Eye Contact with Petitioner, Saw Smoke Come Out of the Car Windows, Made a U-Turn, and Parked 15-20 feet Behind the Car

Although the Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated," the Fourth Amendment is not implicated when police engage in "consensual encounters that result in no restraint of liberty whatsoever." (*People v. Steele* (2016) 246 Cal.App.4th 1110, 1115.) "Consensual encounters do not trigger Fourth Amendment scrutiny. [Citation.] Unlike detentions, they require no articulable suspicion that the person has committed or is about to commit a crime." (*Manuel G., supra,* 16 Cal.4th at p. 821.) A consensual encounter becomes a detention when the officer, "by means of physical force or show or authority, has in some way restrained the liberty

of a citizen" and effected a seizure. (*Terry v. Ohio* (1968) 392 U.S. 1, 19, fn. 16.)

Courts consider the totality of the circumstances in determining whether the citizen has been detained, and the Fourth Amendment requires every detention to be supported by reasonable suspicion. (*Florida v. Bostick* (1991) 501 U.S. 429, 439; *Brown, supra,* 61 Cal.4th at pp.980-987.) In evaluating whether an encounter that begins with an officer encountering a parked car has become a detention, the test is "whether a reasonable person in [the defendant's] position would have felt free to leave." (*Brown, supra*, 61 Cal.App.4th at p. 980, citing *Brendlin v. California* (2007) 551 U.S. 249, 257.)

In *Brown,* a deputy responding to a call about fighting in an alley saw a car driving toward him from the fight and asked the driver, Brown, if he had seen a fight, to which Brown did not respond. (*Brown, supra*, 61 Cal.4th at p. 973.) Suspecting Brown had been involved in the fight, the deputy turned around and followed him, finding Brown's car parked not far from where the fight had occurred. (*Ibid.*) The Court determined that Brown was detained as soon as the deputy pulled behind his car and activated the emergency lights, rejecting the State's contention that Brown could not be detained until the deputy approached his car on foot and made contact with him. (*Id.* at p. 980.) There was no evidence that Brown was unconscious or otherwise distracted, and the "reasonable inference to be drawn from the record was that Brown was aware of the deputy's overhead emergency lights flashing in the dark immediately behind his car." (*Ibid.*) The Court concluded that "no circumstances would have conveyed to a reasonable person that [the deputy] was doing anything other than effecting a detention." (*Ibid.*)

Kidd came to a similar conclusion in a case where spotlights, rather

the emergency lights, were activated. The officer in *Kidd* was on patrol early one morning when he saw a car parked on a residential street with fog lights on, containing two passengers. (*Kidd, supra,* 36 Cal.App.5th at p. 15.) The officer, thinking the occupants might be stranded or live there, made a U-turn, parked 10 feet behind the car, and pointed two spotlights at it. (*Ibid.*) As the officer got out of his patrol car and began to approach the parked car, he smelled marijuana. (*Ibid.*) Upon reaching the window of the driver, Kidd, the officer asked what the occupants were doing and used his flashlight, allowing him to see the passenger attempting to conceal bags of what he suspected was marijuana. (*Ibid.*) After advising the officer that he was on probation, Kidd told the officer there was a gun in the center console. (*Id.* at pp. 15-16.)

Reviewing prior case law, *Kidd* acknowledged that an officer simply parking behind a suspect's car would not be construed as a detention, nor would merely shining a spotlight on a person in a car. (*Kidd, supra*, 36 Cal.App.5th at p. 21, citing *People v. Franklin* (1987) 192 Cal.App.3d 935, 940, and *People v. Rico* (1979) 97 Cal.App.3d 124, 128-130.) The Court noted that *People v. Garry* (2007) 156 Cal.App.4th 1100, had found there was a detention where the officer's actions, including use of a spotlight, had communicated that a pedestrian was not free to leave. (*Kidd, supra*, 36 Cal.App.5th at p. 21, citing *Garry, supra*, 156 Cal.App.4th at pp. 1111-1112.)

Considering the totality of the circumstances, *Kidd* found the defendant "was detained when the officer made a U-turn to pull in behind him and trained spotlights on his car." (*Kidd, supra,* 36 Cal.App.5th at p. 21.) Although the officer had not blocked Kidd's car or used the emergency lights, which would "unambiguously signal a detention," the Court noted that "motorists are trained to yield immediately when a law enforcement

vehicle pulls in behind them and turns on its lights." (*Ibid.*) "Regardless of the color of the lights, a reasonable person in Kidd's circumstances 'would expect that if he drove off, the officer would respond by following with red lights on and sirens sounding ...,'" (*Ibid.*, quoting *People v. Bailey* (1985) 176 Cal.App.3d 402, 406.)

As mentioned above, the Court of Appeal in this case relied primarily on *Perez* in rejecting the decision of the Fourth Appellate District in *Kidd*. (Opinion at pp. 10-11, 12.) In *Perez*, the officer positioned the patrol vehicle head on with the defendant's vehicle while leaving room to drive away, and activated both spotlights "'to get a better look at the occupants and gauge their reactions.'" (Opinion at p. 10, quoting *Perez, supra,* 211 Cal.App.3d at p. 1494.) The spotlights disclosed "a male driver and a female passenger slouched over in the front seat," and when the officer then walked over to the car, tapped on a window, and asked the driver to roll it down, he received only slurred speech in response. (*Perez, supra*, 211 Cal.App.3d at p. 1494.) Focusing solely on the officer's conduct in turning on spotlights instead of the emergency lights, *Perez* found it "'did not manifest police authority to the degree leading a reasonable person to conclude he was not free to leave. While the use of high beams and spotlights might cause a reasonable person to feel himself the object of official scrutiny, such directed scrutiny does not amount to a detention.'" (Opinion at p. 10, quoting *Perez,* supra, 211 Cal.App.3d at p. 1496.)

Like *Perez*, the Third Appellate District completely ignores the officer's actions in this case prior to activating the spotlight. While there may have been some doubt that the "slouched over" occupants of the car in *Perez* were aware of the officer's prior interest, Petitioner was certainly aware of Grubb's scrutiny of him and his car even before he turned on his spotlight. "I had my high beams on and it was well lit up, they – they saw

me as well too. As they were leaning back, I could see them looking at me as I turned by them." (CT 104.) Grubb then made a U-turn and pulled up behind the car while leaving his high beams on, before training his spotlight on the car to further illuminate it. (CT 33-34, 88-89, 103-105.)

The officer's use of a spotlight in this case was not merely a brief check to see if he could see the occupants, as in *Rico, supra*, 97 Cal.App.3d at pp. 128-130, but was the follow-up on the investigation that the officer had already begun, as in *Brown* and *Kidd*. People who become aware they are "the focus of the officer's particularized suspicion" are considered detained because"no reasonable person would have believed that he was free to leave." (*Wilson v. Superior Court* (1983) 34 Cal.3d 777, 791.) The Third Appellate District did not provide any explanation for why a reasonable person in Petitioner's circumstance would feel free to disregard the official, directed scrutiny caused by the use of a spotlight (*Perez, supra*, 211 Cal.App.3d at 1496), after the officer had already established a connection with Petitioner.

The Court should grant review to determine the circumstances under which the use of a searchlight constitutes the detention of the occupants of a parked car.

II. The Officer Detained Petitioner By Turning on a Spotlight and Approaching the Car as Soon as Possible After Alerting Dispatch

While *Brown, supra,* 61 Cal.4th at p. 980, and *Kidd,* 36 Cal.App.5th at p. 21, did not find it necessary to consider the officer's actions after activating the lights to determine that there had been a detention, *Garry* explained the importance of those actions in evaluating the coerciveness of an encounter involving a spotlight. (*Garry, supra*, 156 Cal.App.4th at pp.

1111-1112.) Even though the officer in *Garry* had parked a considerable distance away from a pedestrian, did not use emergency lights or draw a weapon, made no verbal commands, and did not prevent the pedestrian from leaving, the First Appellate District held the pedestrian had been detained. (*Ibid.*) After observing the pedestrian from a marked patrol car for only 5-8 seconds, the officer "bathed defendant in light, exited his police vehicle, and, armed and in uniform, 'briskly' walked 35 feet in 'two and a half, three seconds' directly to him while questioning him about his legal status." (*Id.* at p. 1111.) *Garry* concluded the show of authority was sufficiently intimidating that no reasonable person would have felt free to decline the officer's requests or terminate the encounter. (*Id.* at p. 1112.)

While *Kidd* acknowledged that the officer had not signaled the detention "unambiguously" (*Kidd, supra,* 36 Cal.App.5th at p. 21), the Court went on to explain:

> [A]ny ambiguity was removed when the officer more or less immediately exited his patrol vehicles and began to approach Kidd's car. Although the officer's approach was, according to record, not made in a particularly aggressive or intimidating manner, a reasonable person in Kidd's circumstances would not have felt free to leave.

(*Kidd, supra,* 36 Cal.App.5th at pp. 21-22.)

The Third Appellate District rejected *Kidd's* analysis of this issue, relying again on the conclusion in *Perez,* which failed even to consider the officer's actions after activating the spotlight. (Opinion at p. 12; see *Perez, supra,* 211 Cal.App.3d at p. 1496.) The Court determined that Grubb, unlike the officer in *Garry*, "did not quickly close the gap between himself and defendant or immediately and aggressively question him rather than engage in conversation." (Opinion at pp. 10-11.) But Grubb testified that he got out of his patrol car as quickly as possible after alerting dispatch,

within 15 or 20 seconds, and then immediately detained M.K. (CT 34, 90-94, 103, 106-110, 113-115.)

Particularly given Grubb's prior actions in making eye contact with Petitioner, making a U-turn, pulling up behind Petitioner's car, and turning on the spotlight, his actions after turning on the spotlight in starting to walk toward that car would inevitably remove any ambiguity in Petitioner's mind that Grubb intended to detain everyone in his car, even if it was not done aggressively. (*Kidd, supra*, 36 Cal.App.5th at pp. 21-22.) Assuming immediate and aggressive questioning was required, Grubb's action in immediately detaining M.K. would be at least as intimidating as any subsequent questioning in establishing Grubb's intention to detain everyone in the car.

If an officer simply activated a spotlight, pointed it at a car, and left it there indefinitely, at some point a reasonable person might decide that the officer was no longer interested in the car or its occupants. But when an officer has already made eye contact with the car's occupants, who are fully aware of him, made a U-turn to pull up behind the car, activated a spotlight, and promptly begun walking toward the car, any reasonable person would have to believe that the officer intended to seize the car and its occupants. (*Brown, supra,* 61 Cal.4th at p. 980.)

The Court should grant review to determine the circumstances under which the use of a searchlight constitutes the detention of the occupants of a parked car.

III. The Officer Detained Petitioner By Turning on a Spotlight, Approaching the Car, and Stopping a Passenger Who Attempted to Leave

Finally, the Third Appellate District concluded that Petitioner would still have felt free to drive or walk away from the scene even after Grubb detained M.K. because "there is no evidence defendant observed the deputy's interaction with M.K., or that the deputy conveyed to defendant that he, like M.K., was required to remain." (Opinion at p. 12, citing *Bostick, supra*, 501 U.S. at pp. 434-437.)

Like the State's contention in *Brown* that the driver of the car would not have been aware of the emergency lights flashing behind his car, this "argument is not supported by substantial evidence." (*Brown, supra,* 61 Cal.4th at p. 980.)[1] Petitioner was the driver of a small car with the windows cracked open, not a large metropolitan bus with a separate rear exit. (CT 32-33, 87-88, 104.) Petitioner became aware of Grubb's scrutiny when the deputy drove by his car with the high beams on and made eye contact with him, and had certainly remained aware when Grubb made a U-turn, pulled up behind him, activated the spotlight, and began approaching the car. (CT 33-34, 89-93, 103-105.) M.K.'s exit from the car took place a few feet from where Petitioner was sitting, and with the windows cracked he was certainly aware that Grubb had prevented M.K. from going to her nearby house.

Bostick is largely inapposite, dealing primarily with the standard for

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[1] Similarly, the Court's conclusion that "the implied finding that defendant was not detained at this point is supported by substantial evidence" (Opinion at p. 12), must be rejected. There was no indication the magistrate made this determination (CT 131-133), and such an implied determination would have been a legal error, not supported by substantial evidence. (*People v. Magee* (2011) 194 Cal.App.4th 178, 182-183.)

determining whether a person in an enclosed space, like a bus, has been detained when the person may not have felt free to leave without regard to any police conduct. (*Bostick, supra*, 501 U.S. at pp. 434-437; see discussion in *Brown, supra*, 61 Cal.4th at pp. 976-980.) While *Bostick* does discuss the need for officers to convey that compliance is required (*Bostick, supra*, 501 U.S. at pp. 435, 437), the Court acknowledges that M.K. "was required to remain" (Opinion at p. 12), and there would have been no reason that Petitioner, as the driver of the car, would have felt free to leave after M.K. was detained.

Considering the totality of the circumstances, the detention of one out of three occupants of a small car would constitute an intimidating show of authority sufficient to communicate to any reasonable person sitting in the driver's seat that he was not free to leave. (*Garry, supra*, 156 Cal.App.4th at p. 1112.)

The Court should grant review to determine the circumstances under which the use of a searchlight constitutes the detention of the occupants of a parked car.

CONCLUSION

In the past year, two Courts of Appeal have reached conflicting decisions on important Fourth Amendment issues regarding the effect of a spotlight in determining whether an encounter between authorities and the occupants of a parked car is consensual or constitutes a detention.

This Court should grant review to resolve this dispute among the appellate courts.

DATED: August 31, 2020 LAW OFFICE OF PAUL KLEVEN

/s/ Paul Kleven
PAUL KLEVEN
Attorney for Petitioner
Leon Tacardon

CERTIFICATE OF COUNSEL

I certify that this Petition for Review contains 4,968 words, as calculated by my WordPerfect x8 word processing program.

/s/ Paul Kleven
PAUL KLEVEN

Filed 7/22/20; Certified for publication 8/7/20 (order attached)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE, Plaintiff and Appellant, v. LEON WILLIAM TACARDON, Defendant and Respondent.	C087681 (Super. Ct. No. STK-CR-FER-2018-0003729)

Defendant Leon William Tacardon was charged with possession of a controlled substance for sale (Health & Saf. Code, § 11351) and misdemeanor possession of marijuana for sale (Health & Saf. Code, § 11359). Evidence of these crimes was seized following an interaction with San Joaquin County Sheriff's Deputy Joel Grubb, the details of which will be set forth momentarily. After an unsuccessful motion to suppress

Exhibit A

the evidence made during the preliminary hearing pursuant to Penal Code[1] section 1538.5, defendant renewed the motion in the superior court under section 995 and prevailed. The People appeal. We reverse.

BACKGROUND

The facts are taken from the evidence presented at the hearing on defendant's motion to suppress.

Deputy Grubb testified that at 8:45 p.m. on March 20, 2018, he was in uniform and driving a marked patrol car, with its high beams on, on Fairway Drive in Stockton.[2] The deputy saw a gray BMW legally parked between two houses with its engine and headlights off. Three people were in the BMW, two of whom were reclining in the front seats wearing hooded sweatshirts. Smoke was coming out of the car windows that were slightly cracked open.

Deputy Grubb made a U-turn, pulled up 15 to 20 feet behind the BMW, and parked, intending to contact the persons inside. He did not activate his siren or emergency lights, but turned on his spotlight to illuminate the car's interior. He got out and began to approach the car; his weapon was not drawn.

As Deputy Grubb approached the BMW, the passenger who had been in the rear seat, M.K., jumped out and closed the door behind her, moving very quickly and "kind of abrupt[ly]." Her conduct struck the deputy as "unusual" and caused him to be concerned for his safety, although he did not see anything in her hands or any bulge in her clothing, and she did not make any movements that appeared threatening.

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1 Undesignated statutory references are to the Penal Code.

2 According to Deputy Grubb, the search took place in "west Stockton," a high-crime, high-drug area. However, the immediate neighborhood was known as Riviera Cliffs and was adjacent to "the Country Club area." The deputy did not know how many drug arrests had recently been made in Riviera Cliffs or how the drug arrest rate there compared to that in other parts of west Stockton.

When M.K. got to the rear of the BMW, Deputy Grubb asked her what she was doing. She replied: "I live here." The deputy asked her to stay outside the car and near the sidewalk behind it, where he could observe her and react in time in case she were armed or began to act irrationally. He did not draw his gun or Taser and spoke in a "moderate" and "fairly calm" voice. She complied with his orders.

Deputy Grubb did not smell marijuana before M.K. got out of the BMW, as he was not close enough to the car yet. However, he smelled the substance at about the time she got out and he made contact with her.[3] At that point, the deputy did not consider any of the car's occupants free to leave. The deputy then approached the BMW, using his flashlight to illuminate the interior because the rear windows were tinted. On the rear passenger floorboard, he saw three large clear plastic bags, the largest at least eight inches across and "kind of tied off," containing a green leafy substance. He also saw a custom-rolled dark brown and green cigarette in the center console, containing a burnt green leafy substance; he did not believe it was lit.

Deputy Grubb contacted the two men in the front seat and asked for their identification. Defendant, who was in the driver's seat, did not produce identification but gave his name and said he was on probation. The front seat passenger produced identification that the deputy took and retained while speaking to the men. The deputy told defendant to stay in the car.

Deputy Grubb returned to his patrol car and conducted a records check that confirmed the identifications of the BMW's occupants and showed defendant was on searchable probation. The deputy secured defendant in the back of the patrol car.

Along with other deputies, Deputy Grubb conducted a probation search of the BMW. The search uncovered, in addition to the plastic bags, an unlabeled prescription

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[3] The deputy stated that detaining M.K. and smelling the marijuana happened "all kind of simultaneously."

vial containing 76 suspected hydrocodone pills in a storage area near the passenger-side rear door. Defendant was arrested, and $1,904 was found on his person.

Laboratory analysis showed the plastic bags contained 696.3 grams of marijuana and the pills were hydrocodone. An expert opined both substances were possessed for purposes of sale.

The Magistrate's Ruling

After hearing argument on the suppression motion, the magistrate ruled:

"Deputy Grubb said that he was on Fairway Drive, which is in Riviera Cliffs, which I always thought was one of the wealthier areas of Stockton, but he said it[] . . . has a high crime rate. . . . I've been a judge for 34 years. I don't recall that many cases coming out of Riviera Cliffs. In any case, he saw a BMW with three people in it at 8:45 p.m., March 20th of 2018. And two are in the front, one was in the back. And he saw smoke. The windows were cracked. I took that to mean they were open a small amount. The engine was not running. The vehicle was not moving. He . . . was going to contact the people. So he turned on his spotlight and illuminated the vehicle. At that point, the female passenger from the back seat exited quickly, jumped out, as he described it. Then he . . . said that -- and this was subject to quite a few questions -- that I think what happened was as she -- up until then, he didn't smell marijuana. When she opened the door, he told her to stop. At that point, he did not smell the marijuana. But then more or less -- well, a little bit after she opened the door, a little bit after he told her to stop, he smelled the marijuana. And he told her . . . to stay in his vision for safety. So then . . . he used . . . his flashlight. And he turned the flashlight -- he had the flashlight on. And he can see large clear plastic bags with green leafy substance, approximately eight inches in diameter, in plain sight in the vehicle. This was as a result of looking through the windows with a flashlight. That . . . is not considered a search. He saw a cigarette in the center console that was rolled. It was dark, a burned substance, but it was a green leafy substance. I guess it was a combination of both. As it turned out, the

substance was marijuana, . . . 696.3 grams. So there were three baggies. So I would say this is approximately half a pound per bag. And after all this happened -- and this all happened pretty quickly. Once he flashed his light on the vehicle and observed the material, he then asked for ID from the defendant. The defendant didn't have it. Then he obtained the name and date of birth from the defendant. And he subsequently recovered the marijuana. He . . . also discovered a vial of 76 pills in the passenger door, which were determined to be [O]xycodone. So then he arrested the defendant.

"[I]t's not against the law to possess an ounce, but if it's more than an ounce, then it's against the law. In other words, possession for sale of marijuana is still a felony.[4] So I think the officer had probable cause to believe that . . . this was more than an ounce that he saw in plain sight. I think it was a police contact. . . . [I]n other words, he didn't stop the defendant. There certainly was a point at which the defendant wasn't free to go, but that still would not preclude it being characterized as a contact. And so the question is were his Fourth Amendment rights violated. And I'm going to say even with the new law about marijuana, . . . they were not violated. . . . [B]ecause all this happened so quickly, . . . and the vehicle was stopped already, I don't think his Fourth Amendment rights were violated. I think it was a valid search. In other words, after the officer saw this, he was entitled to seize it. And the search of the . . . passenger side door would be a search incident to a lawful arrest.

"So here we had ample amount of marijuana and -- now, as far as the [O]xycodone, was that possessed for sale? Well, it might be possessed for personal use. Very possibly. But the issue for a preliminary examination is is there reasonable and

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4 After defense counsel questioned this finding, the magistrate determined that under current law that was already in effect at the time of the search, possession of marijuana for sale is a misdemeanor. The magistrate then held defendant to answer on count 2 as a misdemeanor.

probable cause to believe that a felony was committed. And I think there's certainly enough evidence to say . . . it certainly could be possessed for sale. Also we have a $1,904 in cash. There could be an innocent reason for the defendant to possess $1,900. Maybe he was going to pay his rent with it, but maybe he wasn't. But in any case, I think there's enough for a preliminary examination. So the 1538.5 is denied."

Ruling on the Section 995 Motion

As mentioned, defendant's section 995 motion renewed his challenge to the search and seizure. After hearing argument on the motion, the superior court ruled:

"[T]he test for a temporary detention is an officer may temporarily detain a person suspected of criminal activity for only so long a period of time as is reasonably necessary to confirm or dispel such suspicions. At the point in time the officer pulled in behind the vehicle, it was . . . a consensual contact. He didn't have his red lights on, he didn't order anyone to do anything.

"When the female got out of the car and he said it was for officer's safety and ordered her to stop, he detained her. That's . . . a detention. And he also said in his testimony the other individuals were detained in the car. . And even though . . . it doesn't matter what he thought -- but to give it any commonsense logic, if he's thinking they're detained, wouldn't a reasonable person think they were detained? And the test for the temporary detention is is the officer able to articulate particular facts that support a reasonable suspicion that the person is involved in criminal activity? . . . [T]his may be the highest crime-rate area ever. There may have been a million reasons justifiable as to why he detained the people in the car prior to smelling the marijuana. But the problem was, he couldn't articulate those things. When you read through the transcripts, when he's asked open-ended why he's doing this, he doesn't testify to any of that.

"So I'm gonna grant the defendant's motion. The evidence is suppressed and the case is dismissed."

This appeal followed.

DISCUSSION

I

Standard of Review

"A criminal defendant is permitted to challenge the reasonableness of a search or seizure by making a motion to suppress at the preliminary hearing. [Citation.] If the defendant is unsuccessful at the preliminary hearing, he or she may raise the search and seizure matter before the superior court under the standards governing a section 995 motion. [Citations.]" (*People v. McDonald* (2006) 137 Cal.App.4th 521, 528-529.) In ruling on a suppression issue as part of a section 995 motion, "the superior court's role is similar to that of an appellate court reviewing the sufficiency of the evidence to sustain a judgment. [Citation.] The superior court merely reviews the evidence; it does not substitute its judgment on the weight of the evidence nor does it resolve factual conflicts. [Citation.]" (*McDonald*, at p. 529.)

On appeal from a superior court's grant of a section 995 motion based on the conclusion a search or seizure was unreasonable, we " 'must draw all presumptions in favor of the magistrate's factual determinations, and we must uphold the magistrate's express or implied findings if they are supported by substantial evidence. [Citations.]' [Citation.] 'We judge the legality of the search by "measur[ing] the facts, as found by the [magistrate], against the constitutional standard of reasonableness." [Citation.] Thus, in determining whether the search or seizure was reasonable on the facts found by the magistrate, we exercise our independent judgment. [Citation.]' [Citation.]" (*People v. Magee* (2011) 194 Cal.App.4th 178, 182-183.)

II

The Challenged Detention Was Reasonable

The Attorney General argues the superior court erred in concluding defendant was detained when Deputy Grubb ordered M.K. to stay outside the car and near the sidewalk behind it. According to the Attorney General, regardless of whether M.K. was detained

at that point, defendant was not detained until after Deputy Grubb smelled marijuana and saw three large bags of the substance on the rear floorboard of the BMW, at which point, "the deputy had reasonable suspicion that criminal activity was afoot." In response, defendant argues the superior court correctly determined a reasonable person in defendant's position would not have felt free to leave when the deputy prevented M.K. from going into her house and ordered her to remain by the BMW.

After the initial briefing was submitted, our colleagues at the Fourth Appellate District decided *People v. Kidd* (2019) 36 Cal.App.5th 12 (*Kidd*), holding the defendant in that case, who was also in a parked car at night, "was detained when the officer made a U-turn to pull in behind him and trained spotlights on his car." (*Id*. at p. 21.) We granted the Attorney General's request to file supplemental briefing addressing the new case. Having reviewed the supplemental briefing filed by the Attorney General and defendant, we agree with the Attorney General's assessment of when the detention occurred and conclude it was supported by reasonable suspicion.[5]

"[N]ot all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." (*Terry v. Ohio* (1968) 392 U.S. 1, 19, fn. 16 [20 L.Ed.2d 889].) Our Supreme Court has explained: "As long as a reasonable person would feel free to disregard the police and go about his or her business, the encounter is consensual and no reasonable suspicion is required on the part of the officer. . . . '[I]n order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances

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[5] This conclusion makes it unnecessary to address the Attorney General's alternative argument that discovery of defendant's probation search condition was an intervening independent circumstance justifying the search and attenuating any taint from an initial unreasonable detention.

surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.' [Citation.] This test assesses the coercive effect of police conduct as a whole, rather than emphasizing particular details of that conduct in isolation. [Citation.] Circumstances establishing a seizure might include any of the following: the presence of several officers, an officer's display of a weapon, some physical touching of the person, or the use of language or of a tone of voice indicating that compliance with the officer's request might be compelled. [Citations.] The officer's uncommunicated state of mind and the individual citizen's subjective belief are irrelevant in assessing whether a seizure triggering Fourth Amendment scrutiny has occurred." (*In re Manuel G.* (1997) 16 Cal.4th 805, 821.)

It is settled that the driver and occupants of a vehicle are detained when a police officer blocks the vehicle's only means of departure with the officer's patrol car. (*People v. Wilkins* (1986) 186 Cal.App.3d 804, 809 [detention occurred when officer in marked patrol car parked diagonally behind defendant's vehicle so it could not exit parking lot].) However, "[w]ithout more, a law enforcement officer simply parking behind a defendant would not reasonably be construed as a detention." (*Kidd, supra,* 36 Cal.App.5th at p. 21, citing *People v. Franklin* (1987) 192 Cal.App.3d 935, 940.) It is also settled that the use of emergency lights is a sufficient show of authority to communicate to a reasonable person that he or she is not free to leave. (*People v. Bailey* (1985) 176 Cal.App.3d 402, 405-406 ["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"].) However, "[w]ithout more, a law enforcement officer shining a spotlight on a person does not constitute a detention." (*Kidd, supra,* 36 Cal.App.5th at p. 21, citing *People v. Rico* (1979) 97 Cal.App.3d 124, 128-129; *People v. Franklin, supra,* 192 Cal.App.3d at p. 940.)

For example, in *People v. Perez* (1989) 211 Cal.App.3d 1492 (*Perez*), a police officer parked his patrol car in front of Perez's vehicle, leaving "plenty of room" for Perez to drive away, and activated both spotlights on the patrol car "to get a better look at the occupants and gauge their reactions." (*Id.* at p. 1494.) The officer then walked over to the car, tapped on the window, and asked the driver to roll down the window. (*Ibid.*) The appellate court concluded: "[T]he conduct of the officer here did not manifest police authority to the degree leading a reasonable person to conclude he was not free to leave. While the use of high beams and spotlights might cause a reasonable person to feel himself [or herself] the object of official scrutiny, such directed scrutiny does not amount to a detention. [Citations.]" (*Id.* at p. 1496.)

In contrast, *People v. Garry* (2007) 156 Cal.App.4th 1100 (*Garry*) involved more than the use of a spotlight to illuminate the person under scrutiny. As the appellate court explained, the following circumstances amounted to a sufficient show of authority to communicate to a reasonable person in the defendant's position that he was not free to leave: "[A]fter only five to eight seconds of observing defendant[, a pedestrian,] from his marked police vehicle, [the officer] bathed defendant in light, exited his police vehicle, and, armed and in uniform, 'briskly' walked 35 feet in 'two and a half, three seconds' directly to him while questioning him about his legal status. Furthermore, [the officer] immediately questioned defendant about his probation and parole status, disregarding defendant's indication that he was merely standing outside his home. In other words, rather than engage in a conversation, [the officer] immediately and pointedly inquired about defendant's legal status as he quickly approached." (*Id.* at pp. 1111-1112, fn. omitted.)

Here, as in *Perez*, there is no evidence in the record indicating that the BMW was blocked in by Deputy Grubb's patrol car. Nor does the fact that the deputy pulled up behind the BMW, activated the patrol car's spotlight, and approached the vehicle on foot, manifest a sufficient show of police authority to constitute a detention. Unlike *Garry*, the

deputy did not quickly close the gap between himself and defendant or immediately and aggressively question him rather than engage in conversation. Nor does defendant argue, either in his initial briefing or in his supplemental brief, that a detention occurred when the deputy illuminated the BMW with the spotlight and began to approach on foot. We nevertheless pause the sequence of events here because *Kidd*, *supra*, 36 Cal.App.5th 12, holds to the contrary.

In *Kidd*, a police officer on patrol in a marked police car at night saw a car with two occupants parked on a residential street with its fog lights on. The officer drove past the car, made a U-turn, parked about 10 feet behind the car, and illuminated the car with two spotlights. He then got out of his car and approached the parked car on foot, detecting a strong marijuana odor as he did so. When the officer reached the driver's window, he shined his flashlight in the car and asked the occupants what they were doing. Ultimately determining the driver was subject to searchable probation, the subsequent search of the car uncovered drugs and a firearm. (*Kidd*, *supra*, 36 Cal.App.5th at pp. 15-16.) Relying on *Garry*, the appellate court held these circumstances constituted a detention: "Taking into account the totality of the circumstances, we find that Kidd was detained when the officer made a U-turn to pull in behind him and trained spotlights on his car. The officer did not block Kidd's car in, and he did not illuminate his colored emergency lights, so as to unambiguously signal a detention. Nevertheless, motorists are trained to yield immediately when a law enforcement vehicle pulls in behind them and turns on its lights. Regardless of the color of the lights the officer turned on, a reasonable person in Kidd's circumstances 'would expect that if he [or she] drove off, the officer would respond by following with red light on and siren sounding . . . .' [Citation.] Moreover, any ambiguity was removed when the officer more or less immediately exited his patrol vehicle and began to approach Kidd's car. Although the officer's approach was, according to record, not made in a particularly

aggressive or intimidating manner, a reasonable person in Kidd's circumstances would not have felt free to leave." (*Kidd,* at pp. 21-22.)

We disagree with this analysis for the reasons expressed in *Perez,* a decision the *Kidd* opinion inexplicably ignores. Simply put, although a person whose vehicle is illuminated by police spotlights at night may well feel he or she is "the object of official scrutiny, such directed scrutiny does not amount to a detention." (*Perez, supra,* 211 Cal.App.3d at p. 1496.)

Turning to the question of whether Deputy Grubb's interaction with the backseat passenger, M.K., after she got out of the car, in addition to the foregoing events, amounted to a detention, we have no difficulty concluding M.K. was detained at that point. As to her, in addition to the spotlight, the deputy ordered her to remain on the sidewalk near the BMW. (See *People v. Roth* (1990) 219 Cal.App.3d 211, 215 [detention occurred when officer shined spotlight on defendant, stopped the patrol car, got out and commanded defendant to approach].) However, there is no evidence defendant observed the deputy's interaction with M.K., or that the deputy conveyed to defendant that he, like M.K., was required to remain. (See *Florida v. Bostick* (1991) 501 U.S. 429, 434-437 [115 L.Ed.2d 389, 398-400] [no seizure when officers question a person, ask for identification, and request consent for search, so long as officers do not convey message that compliance required].) We conclude the magistrate's implied finding that defendant was not detained at this point is supported by substantial evidence.

Nevertheless, the superior court set this finding aside and found defendant was detained even before the deputy contacted him, apparently because the deputy testified he did not *subjectively* consider the car's occupants free to leave after he had contacted M.K.[6] Because the superior court should not have made new factual findings on a

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6 After citing the deputy's testimony, the superior court stated: "[I]t doesn't matter what he thought." However, the court then added that according to "commonsense

section 995 motion, and because the deputy's uncommunicated state of mind would not have suggested to a reasonable person in defendant's position that he was not free to leave, we disregard the superior court's finding on this question. (See *People v. Magee*, *supra*, 194 Cal.App.4th at p. 182; *People v. McDonald*, *supra*, 137 Cal.App.4th at p. 529.)

Based on the magistrate's factual findings expressed on the record and supported by substantial evidence, we conclude defendant was detained by Deputy Grubb not when the deputy detained M.K., but when the deputy, after smelling marijuana coming from the BMW and seeing three large bags of the substance on the rear floorboard, told defendant to remain in the car while he conducted a records check. At that point, there can be no doubt the deputy possessed reasonable suspicion defendant was engaged in criminal activity. (See *People v. Fews* (2018) 27 Cal.App.5th 553, 560 [officers smelled and saw marijuana in vehicle, supplying reasonable suspicion the defendant may have been unlawfully transporting the substance].)

We conclude the superior court erred by setting aside the magistrate's ruling denying defendant's motion to suppress evidence. We therefore grant the relief requested by the Attorney General.

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logic," "if he's thinking they're detained, wouldn't a reasonable person think they were detained?" The answer is no: if an officer has not said or done anything to cause a reasonable person to think he or she is detained, the officer's unspoken thoughts are irrelevant. (*In re Manuel G.*, *supra*, 16 Cal.4th at p. 821.)

DISPOSITION

The superior court's order is reversed, and the matter is remanded with directions to reinstate the information and the magistrate's order denying defendant's motion to suppress evidence.

/s/
HOCH, J.

We concur:

/s/
ROBIE, Acting P. J.

/s/
BUTZ, J.*

* Retired Associate Justice of the Court of Appeal, Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Filed 8/7/20

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE, Plaintiff and Appellant, v. LEON WILLIAM TACARDON, Defendant and Respondent.	C087681 (Super. Ct. No. STK-CR-FER-2018-0003729) ORDER CERTIFYING OPINION FOR PUBLICATION [NO CHANGE IN JUDGMENT]

APPEAL from a judgment of the Superior Court of San Joaquin County, Michael J. Mulvihill, Judge. Reversed with directions.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Eric L. Christoffersen, and Christopher J. Rench, Deputy Attorneys General, for Plaintiff and Appellant.

Paul Kleven, under appointment by the Court of Appeal, for Defendant and Respondent.

THE COURT:

The opinion in the above-entitled matter filed on July 22, 2020, was not certified for publication in the Official Reports. For good cause it now appears that the opinion

should be published in the Official Reports and it is so ordered.

FOR THE COURT:

/s/
ROBIE, Acting P. J.

/s/
HOCH, J.

/s/
BUTZ, J.*

* Retired Associate Justice of the Court of Appeal, Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA:

I am a citizen of the United States. My business address is 1604 Solano Avenue, Berkeley, CA. 94707. I am employed in the County of Alameda, where this mailing occurs. I am over the age of 18 years, and not a party to the within cause. On the date set forth below, I served the foregoing document(s) described as:

PETITION FOR REVIEW

on the following person(s) in this action:

Clerk
San Joaquin County Superior Court
222 E. Weber Ave, Ste 303
Stockton, CA 95202

Office of the District Attorney
San Joaquin County
901 G Street
Sacramento, CA 95814

Leon Tacardon
(Address known to Attorney)

[✔] (BY MAIL) I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I sealed said envelope and placed it for collection and mailing on August 31, 2020, following ordinary business practices.

And,

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[✔] (BY TRUEFILING SERVICE) On August 31, 2020, a PDF version of this document will be e-Served through TrueFiling electronic service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 31, 2020, at Berkeley, California.

/s/ Kathy Yam
KATHY YAM

People v. Tacardon
Third District Court of Appeal Case No. C087681