In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

SHAUNTREL RAY BROWN,

Defendant and Appellant.

Case No. S218993

Fourth Appellate District, Division One, Case No. SCS264898
San Diego County Superior Court, Case No. D064641
The Honorable Theodore M. Weathers, Judge

ANSWER BRIEF ON THE MERITS

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INTRODUCTION

A 911 caller in the Imperial Beach area of San Diego County reported that he could hear multiple people violently fighting behind his residence. The caller stated that he specifically heard one of the combatants say "the gun was loaded." The 911 dispatcher—who could overhear people fighting and screaming in the background of the call—confirmed the caller's address through the 911 emergency system. San Diego Sheriff Deputy Josh Geasland, who was working patrol nearby, was on the scene within three minutes.

When Deputy Geasland arrived, appellant was the only person in the area of the fight, driving away from the scene. The officer noticed that appellant, who appeared aloof and dazed, pulled away from the crime scene and parked his car on the side of the road. Deputy Geasland parked his patrol car behind appellant's parked car, turned on his vehicle's "lights," and approached appellant's car on foot to ask whether he knew anything about the reported fight. As soon as the officer contacted appellant, he immediately perceived several symptoms of alcohol intoxication.

Appellant now argues that he was detained at the moment Deputy Geasland parked his patrol car behind his already parked car and turned on the patrol vehicle's "emergency lights." As outlined below, there is no indication from the record that the "lights" used by the officer were "emergency lights," "overhead lights," red and blue flashing lights, spotlights, or any type of lights that would cause a reasonable person to believe he was required to remain stopped. As is well established by the applicable standard of review, all factual inferences must be drawn in support of the trial court's ruling.

Furthermore, the officer did not employ any additional authoritative actions, such as issuing oral commands or blocking appellant's car, that would lead a reasonable person to believe he was not free to leave.

Accordingly, no detention occurred until after Deputy Geasland approached appellant on foot and discovered he was intoxicated. In any event, the exigent nature of the call, coupled with the officer's quick response to the exact location of the fight and appellant being the only person in the area, provided Deputy Geasland with reasonable suspicion to briefly detain appellant

STATEMENT OF THE CASE AND FACTS

The night of March 26, 2013, San Diego Sheriff Deputy Josh Geasland was working patrol in Imperial Beach, California. (2 RT 10.) At 10:37 p.m., a 911 call was placed reporting that a fight was taking place in the alley behind the caller's residence. (2 RT 10-11.) The caller identified his address and specified the location of where the fight was taking place. (2 RT 7-8; Exhibit 3 [CD of 911 call].)[1] During the 911 call, the dispatcher could overhear people screaming in the background during the call. (2 RT 10-11; Exhibit 3 [CD of 911 call].) The caller also stated that a "loaded gun" was involved in the fight. (2 RT 7-8, 10-11.) Specifically, during the call, the following exchange took place between the reporting party and the 911 dispatcher:

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[1] Exhibit 3 [CD of 911 call] and Exhibit 4 [CD of dispatch communications] were both played for the trial court at the outset of the suppression hearing. (2 RT 7-8.) The defense entered a stipulation regarding the foundation and authentication for those two exhibits. (2 RT 5-6.) Exhibit 1 [color photograph or area] and Exhibit 2 [color photograph of area] were used by the prosecution during Deputy Geasland's testimony. (2 RT 14-16.) All four exhibits were received in evidence by the trial court. (2 RT 15-16 [exhibits 1 and 2], 29-30 [exhibits 3 and 4].) In addition, the transcript of the 911 call was neither marked nor admitted as an exhibit in the trial court. (See 2 RT 6-8.) However, appellant's unopposed motion to augment the appellate record with the transcript of the 911 call was granted by the Court of Appeal. (Court of Appeal Order filed December 24, 2013.)

RP: One of them says, that hey, he had, it was, it was, the gun was loaded.

911: Somebody said that?

RP: Yeah, one of the guys.

911: And it sounds physical?

RP: Yes, they are fighting right now. You hear the screams?

911: I hear it. So, you heard one person say they have a gun and it's loaded?

RP: Yes.

(Exhibit 3 [CD of 911 call].)

Deputy Geasland—who was nearby the location of the reported fight—arrived at the scene about three minutes after the 911 call came in. (2 RT 10-11.) The sound of his approaching siren can be overheard in the background on the 911 call, and near the conclusion of the brief call the reporting party indicated that the police had arrived. (Exhibit 3 [CD of 911 call].)[2] Also near the end of the call—approximately 50 seconds before Deputy Geasland arrived—the reporting party informed dispatch that "somebody is getting in the car." (Exhibit 3 [CD of 911 call].)

Deputy Geasland was by himself in a marked patrol vehicle when he arrived. When Deputy Geasland turned his patrol vehicle into the alley about three minutes after the call, he saw appellant driving toward him

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[2] The entire 911 recording—from the moment the call is placed until the moment the caller sees a police officer and the call is concluded—lasts 3 minutes 51 seconds. (Exhibit 3.) At 2 minutes 44 seconds into the call, the reporting party first states that he can hear the approaching sirens. (Exhibit 3.) At 3 minutes 45 seconds, the reporting party states that a police officer had arrived to the scene. (Exhibit 3.)

away from where the fight had reportedly just taken place. (2 RT 11.) Other than appellant, there were no other individuals or activity in the alley, and there were not "any other cars around." (2 RT 11-12.) Deputy Geasland attempted to get appellant's attention by yelling out to him: "Hey. Hey. Did you see a fight?" (2 RT 12.) Appellant did not respond to or acknowledge Deputy Geasland. (2 RT 12.)

Deputy Geasland drove his patrol vehicle down the alley and concluded that, other than appellant, "there was no one around." (2 RT 13.) Appellant aroused the officer's suspicions because appellant was coming from the "exact address where the fight call came out" and it was just a few minutes after the call. (2 RT 13-14.) In addition, Deputy Geasland was on heightened alert because the nature of the call involved a loaded gun, and he was also considering the possibility that appellant could be injured from the incident. (2 RT 13-14.) Due to these concerns, Deputy Geasland considered investigating whether appellant was involved in the fight, whether appellant was the person with the loaded gun, and to check on appellant's welfare in case he was injured. (2 RT 14.)

Deputy Geasland turned his patrol vehicle around at the end of the alley, after which he drove back from where he came, toward the road from where he initially entered the alley. (2 RT 13; Exhibit 2 [photo of area].) As the officer was exiting the alley, he noticed that appellant had since pulled his vehicle to the side of the road and come to a stop. (2 RT 13-14, 17.) Appellant was "parked on the east side of the road" and his "brake lights were on." (2 RT 13.) Deputy Geasland pulled up behind appellant's parked vehicle and: "turned on my lights basically just to see if he was involved, check the welfare." (2 RT 14.)[3]

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[3] Appellant states that Deputy Geasland "drove around the area until" he found appellant parked on the side of the road. (ABOM 4, citing (continued...)

The deputy clarified that he did not initiate a stop of the vehicle because "it was already stopped . . . it was at a complete stop along the sidewalk." (2 RT 23-24.) Furthermore, the appellate record does not indicate which types of lights Deputy Geasland had available on his patrol vehicle, or which specific lights he activated behind appellant's parked vehicle. There was no questioning regarding whether the deputy activated red and blue flashing lights, solid lights, amber warning lights, white lights, or a spotlight. Rather, the deputy simply stated that he activated his patrol vehicle's "lights" behind the parked car. (See, e.g., 2 RT 28-29.)

Deputy Geasland exited his patrol vehicle, approached appellant's vehicle, and made contact with appellant. (2 RT 17.) Deputy Geasland immediately noticed that appellant's eyes were red, watery, and bloodshot, and that appellant was mumbling and appeared flustered and upset. (2 RT 17.) Deputy Geasland—who could also smell the odor of alcohol coming from appellant's vehicle—asked appellant whether he had been drinking and whether he was involved in the fight. (2 RT 17-18.) Appellant admitted that he had been drinking and he had been involved in the fight. (2 RT 17-18 ["I remember eventually asking if [appellant] was involved in the fight, and he did say yes, he was – or he was over there and said there was a lot of drama over there."].)

(...continued)
2 RT 11-12.) In fact, the officer simply drove down the alley until he could turn his car around, after which he exited the alley and noticed appellant parked on the side of the road near the exit of the alley. (2 RT 11-12, 17.) Contrary to appellant's implication, this was not a situation where the officer "drove around the area" on an exploratory search for appellant.

Defense counsel extensively cross-examined Deputy Geasland regarding his credibility and read specific portions of another officer's testimony from the preliminary hearing transcript in an effort to impeach Deputy Geasland. (2 RT 20-24, 26-28.)

Following Deputy Geasland's testimony, the court heard argument from both counsel. Defense counsel argued that Deputy Geasland lacked reasonable suspicion to conduct a traffic stop of appellant's vehicle. (2 RT 30-31.) The prosecution argued that Deputy Geasland had reasonable suspicion to briefly detain appellant in order to further investigate the report of a fight involving a loaded gun. (2 RT 32-35.)

Following argument, the court denied the motion to suppress. (2 RT 38.) In so doing, the court initially noted that it weighed and considered Deputy Geasland's credibility and found him truthful and credible. (2 RT 36.) The court noted that Deputy Geasland arrived at the scene "a very short period of time" after the 911 call reporting the fight with the loaded gun. (2 RT 36-37.) Once on scene, the only individual in the area was appellant, who was driving his car away from the location of the fight. (2 RT 37.) It was not until after appellant parked his car on the side of the road that Deputy Geasland activated his patrol vehicle's lights and contacted appellant. (2 RT 37.) Immediately upon making contact with appellant, Deputy Geasland observed symptoms of alcohol use, including appellant's red, watery eyes, slurred speech, and the odor of alcohol coming from appellant's vehicle. (2 RT 37.) For those reasons, the court denied the motion to suppress. (2 RT 38.)

Following the court's ruling, appellant pleaded guilty to one count of driving while having a measurable blood alcohol level of 0.08 percent or greater. (Veh. Code, § 23152, subd. (b).) (1 CT 66-68.) Appellant admitted that he had three or more prior DUI convictions within the previous 10 years (Veh. Code, § 23550, subd. (a)), and that his blood

alcohol level was 0.15 percent or greater (Veh. Code, § 23578). (1 CT 66-68.)

On appeal, appellant argued that the 911 call should be treated as an "anonymous tip" and that Deputy Geasland lacked reasonable suspicion to detain him. (AOB 7-15.) Following briefing of this issue, the Court of Appeal requested supplemental briefing addressing what effect the United States Supreme Court's opinion in *California v. Hodari D.* (1991) 499 U.S. 621 [111 S. Ct. 1547, 113 L. Ed. 2d 690] (*Hodari D.*) had on whether appellant was detained when Deputy Geasland activated his patrol vehicle's lights behind appellant's parked vehicle. The parties filed supplemental briefs on the issue and later presented oral argument in the Court of Appeal.

On April 22, 2014, the Fourth District Court of Appeal, Division One, filed a unanimous opinion affirming appellant's conviction. The Court of Appeal initially held that the 911 call was not an "anonymous tip," but rather a situation where the caller provided his own precise location, verified by the dispatcher. (Slip opn. at p. 7.) The Court of Appeal also noted that the dispatcher could overhear the fight during the call, and that defense counsel specifically identified the 911 caller by name in the points and authorities filed in the trial court. (Slip opn. at p. 7.) The court went on to hold that Deputy Geasland had reasonable suspicion to briefly detain appellant due to, among other factors: (1) the officer arrived to the scene within three minutes of the call; (2) appellant was the only person in the area; (3) appellant left "the exact location of the reported fight"; (4) appellant failed to respond to or acknowledge the officer's efforts to communicate; (5) appellant voluntarily pulled his vehicle to the side of the road; and (6) the call related to a violent altercation with a report of a loaded firearm being involved. (Slip opn. at p. 8.) Based on these factors, the court concluded that Deputy Geasland had sufficient facts to support a reasonable suspicion that "criminal activity may be afoot." (Slip opn. at p.

8, citing *Terry v. Ohio* (1968) 392 U.S. 1, 19.) The Court of Appeal went on to conclude that although the officer had reasonable suspicion to detain appellant at the moment he pulled his patrol car behind appellant's parked car, appellant was not formally detained until after the officer "approached the car and immediately observed clear indications of intoxication." (Slip opn. at p. 12.)

Appellant petitioned this court for review. Within his Petition for Review, appellant did not include an "Issues Presented" or "Questions Presented" portion. On August 20, 2014, this court issued a plenary order granting appellant's petition.

ARGUMENT

I. APPELLANT WAS NOT DETAINED UNTIL AFTER DEPUTY GEASLAND APPROACHED APPELLANT'S CAR ON FOOT AND PERCEIVED SEVERAL SYMPTOMS OF ALCOHOL INTOXICATION

Appellant was undoubtedly detained after Deputy Geasland approached appellant's car on foot and perceived several symptoms of intoxication. The issue now before this court, however, is whether appellant was detained earlier when Deputy Geasland activated his patrol vehicle's "lights" behind appellant's parked car. In support of his argument, appellant assumes that "lights" must mean "emergency lights" including a "red light." (See ABOM 10, 22-23.) Contrary to appellant's argument, however, the record does not establish what type of "lights" Deputy Geasland activated. There is no indication as to whether the lights were "overhead lights," "emergency lights," red and blue flashing lights, solid lights, yellow lights, amber lights, white lights, or spotlights. As the lower courts have repeatedly ruled, the precise type of lights used by law enforcement is an important—and often times dispositive—factor in determining whether a detention occurred. That is particularly true where,

as here, the officer did not employ any additional authoritative law enforcement actions.

Under the well-established standard of review, when reviewing a motion to suppress evidence, an appellate court must draw all factual inferences supported by substantial evidence in favor of the trial court's ruling. Based on the factual evidence admitted at the suppression hearing, the trial court ruled that appellant was detained after Deputy Geasland approached appellant's car on foot and observed multiple symptoms of alcohol intoxication. (2 RT 37-38.) Thus, under the applicable standard of review, the trial court's ruling must be upheld: no detention occurred when Deputy Geasland simply turned on his patrol vehicle's "lights."

A. General Legal Principles

The Fourth Amendment of the United States Constitution protects citizens "against unreasonable searches and seizures . . ." (U.S. Const., 4th Amend.)

Police contacts with individuals may be placed into three broad categories ranging from the least to the most intrusive: (1) consensual encounters that result in no restraint of liberty whatsoever; (2) detentions, which are seizures of an individual that are strictly limited in duration, scope, and purpose; and (3) formal arrests or comparable restraints on an individual's liberty. (*Wilson v. Superior Court* (1983) 34 Cal.3d 777, 784; *In re James D.* (1987) 43 Cal.3d 903, 911-912.)

The present inquiry concerns the distinction between consensual encounters and detentions. Consensual encounters do not trigger Fourth Amendment scrutiny. (*Florida v. Bostick* (1991) 501 U.S. 429, 434 [111 S.Ct. 2382, 115 L.Ed.2d 389].) Unlike detentions, consensual encounters require no articulable suspicion that the person has committed or is about to commit a crime. (*Wilson v. Superior Court, supra*, 34 Cal.3d at p. 784.)

"'[A] person has been "seized" within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave'" (*id.* at p. 790), or, put another way, "'that he was not at liberty to ignore the police presence and go about his business.'" (*Florida v. Bostick, supra,* 501 U.S. at p. 437.)

> Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.

(*United States v. Mendenhall* (1980) 446 U.S. 544, 554 [100 S. Ct. 1870, 64 L. Ed. 2d 497].)

A police 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.)

In *California v. Hodari D., supra,* 499 U.S. at pp. 625-627, the United States Supreme Court held that a non-physical detention requires not only a show of official authority, but also a suspect's submission to that show of authority. (*California v. Hodari D., supra,* 499 U.S. at pp. 625-627.)

In *Hodari D.*, two police officers were on patrol in a high-crime area. (*Hodari D., supra,* 499 U.S. at p. 622.) They were dressed in street clothes but wearing jackets with "Police" displayed on the front and the back. (*Ibid.*) As the officers patrolled the neighborhood in their unmarked police car they saw a group of four or five youths huddled around a parked car. (*Ibid.*) The youths scattered when they saw the officers' car

approaching. (*Id.* at pp. 622-623.) One of the officers got out of the patrol car and gave chase on foot. (*Ibid.*) As he was chasing one of the juvenile suspects (the respondent in that case), the juvenile tossed away a rock of crack cocaine. (*Ibid.*) Shortly thereafter the officer tackled and handcuffed the juvenile. (*Ibid.*)

The sole issue before the United States Supreme Court was whether the juvenile, at the time he tossed away the drugs, had been "seized" within the meaning of the Fourth Amendment. (*Id.* at pp. 623-624.) The court ruled that he had not. (*Id.* at p. 629.) Specifically, the court explained that a seizure requires either: (1) the application of physical force to a suspect; or (2) a suspect's submission to an assertion of authority. (*Id.* at p. 626.) Stated another way, a detention is not established by the mere display of law enforcement authority—such as commanding "Stop, police!" or chasing after a fleeing suspect—but also requires submission to that display of authority. (See *Id.* at pp. 626-629.) Thus, *Hodari D.* requires two separate factors to establish a non-physical detention: (1) display of law enforcement authority; *and* (2) submission to that authority. (*Hodari D., supra,* 499 U.S. at pp. 626-629.)

In reviewing a ruling on a motion to suppress, an appellate court: (1) determines whether the trial court's factual findings are supported by substantial evidence; and (2) independently reviews the trial court's assessment of the "reasonableness of the challenged police conduct." (*People v. Williams* (1988) 45 Cal.3d 1268, 1301.) An appellate court must draw all factual presumptions in favor of the trial court's ruling if supported by substantial evidence. (See, e.g., *People v. McDonald* (2006) 137 Cal.App.4th 521, 529; *People v. Glaser* (1995) 11 Cal.4th 354, 362; *People v. Williams, supra,* 45 Cal.3d at p. 1301.)

B. The Appellate Record Lacks Sufficient Facts To Support Appellant's Claim That He Was Detained At The Moment The Officer Activated His Patrol Vehicle's "Lights" Behind Appellant's Parked Car

Case law has drawn a distinction between a police officer's use of a patrol vehicle's "emergency lights" and a police officer's use of something less than emergency lights, such as high beams and spotlights. Whereas the former may lead a reasonable person to feel he or she is not free to leave, particularly when coupled with additional authoritative actions, the latter falls short of a formalized "seizure" within the meaning of the Fourth Amendment. In the present case, the appellate record lacks sufficient facts to support appellant's argument that he was detained at the moment Deputy Geasland activated his patrol vehicle's "lights."

In *People v. Bailey* (1985) 176 Cal.App.3d 402 (*Bailey*), a police officer pulled his patrol vehicle behind a parked car occupied by a single person in a department store parking lot that was known to be frequented by drug users. The police vehicle's red and blue front emergency lights, as well as amber rear lights, were activated as the officer approached on foot. Within a few feet of the car, the officer smelled marijuana, causing the officer to ask for consent to search the car. The occupant consented, and the search produced contraband. A motion to suppress the evidence was granted by the trial court on the basis that the consent was not freely given. (*People v. Bailey*, *supra*, 176 Cal.App.3d at p. 404.) The majority of the appellate court affirmed, finding the consent was involuntary because the activation of the emergency lights and other circumstances demonstrated an exercise of official authority that vitiated the voluntariness of the consent to search. (*Id.* at p. 406.)

The court reached a contrary result in *People v. Perez* (1989) 211 Cal.App.3d 1492 (*Perez*). In *Perez*, a police officer parked his patrol vehicle in front of a car occupied by two people. The officer left plenty of

room for the car to leave. He shone his high beams and spotlights, but not his emergency lights, "in order to get a better look at the occupants and gauge their reactions." (*People v. Perez*, *supra*, 211 Cal.App.3d at p. 1494.) The car's occupants were "slouched over in the front seat" but did not otherwise respond to the lights. (*Ibid.*) The officer walked to the car, tapped on the driver's side window with a lit flashlight, and asked the defendant to roll down his window. In distinguishing *Bailey*, the appellate court held:

> [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 the object of official scrutiny, such directed scrutiny does not amount to a detention.

(*Id.* at p. 1496.)

Similarly, in *People v. Franklin* (1987) 192 Cal.App.3d 935 (*Franklin*), a police officer spotted the defendant walking down the street in an area where vandalism, robbery, and narcotics trafficking were prevalent. It was near midnight and the defendant was wearing a coat that seemed too warm for the weather conditions. When the officer put his patrol car's spotlight on the defendant, the defendant tried to hide a white bundle he was carrying. The officer stopped his car directly behind the defendant and began to use his radio, after which the defendant approached the patrol car. The officer got out and met him in the area of the headlights, after which the defendant asked, "'What's going on?'" (*Id.* at p. 938.) Rejecting the defendant's claim that he had been detained as a result of these actions, the appellate court concluded:

> [T]he officer did not block appellant's way; he directed no verbal requests or commands to appellant. Further, the officer did not alight immediately from his car and pursue appellant. Coupling the spotlight with the officer's parking the patrol car, appellant rightly might feel himself the object of official scrutiny. However, such directed scrutiny does not amount to a detention.

(*Id.* at p. 940.)

In *People v. Rico* (1979) 97 Cal.App.3d 124 (*Rico*), an officer's use of a spotlight to illuminate passengers in a vehicle on the freeway was not deemed to constitute a show of authority. After the officer shone the light on the vehicle, he followed the car for approximately five minutes. The driver eventually pulled the vehicle over to the shoulder of the freeway. The officer pulled in behind the car, parking five to six car lengths away and again activated his spotlights. (*Id.* at pp. 128-129.) The court found the officer's action of activating his spotlight on the vehicle while driving down the freeway was insufficient to support a finding that the motorist would have felt compelled to move over. (*Id.* at p. 130.) It was not until the officer subsequently ordered the occupants from the vehicle that the encounter was converted into a detention. (*Id.* at pp. 130-131.)

In contrast, in *People v. Garry* (2007) 156 Cal.App.4th 1100 (*Garry*), a police officer, who was in a marked patrol vehicle late at night, observed the defendant walking on foot in a residential neighborhood. The officer "bathed" the defendant in light from the patrol vehicle's spotlight. (*People v. Garry, supra*, 156 Cal.App.4th at p. 1111.) Armed and in full uniform, the officer walked "briskly" toward the defendant, covering a distance of 35 feet in two and a half to three seconds while questioning him about whether he was on probation or parole. (*Id.* at p. 1104.) Upon seeing the officer, the defendant backed away and spontaneously stated, "'I live

right there'" while pointing to a house. (*Ibid.*) The officer replied "'Okay, I just want to confirm that,'" and asked the defendant if he was on probation or parole. (*Ibid.*) The defendant replied that he was on parole, and the officer detained him. The Court of Appeal found the officer's actions constituted a detention. (*People v. Garry*, *supra*, 156 Cal.App.4th at p. 1111.) The combination of the use of the spotlight, the immediate exit from his patrol car, and the rapid approach toward the defendant while questioning him about his legal status, "constituted a show of authority so intimidating as to communicate to any reasonable person that he or she was '"not free to decline [his] requests or otherwise terminate the encounter."'" (*Id.* at p. 1112.)

In *People v. Jones* (1991) 228 Cal.App.3d 519 (*Jones*), a police officer spotted the defendant standing on the sidewalk with two other men. The officer "suddenly" pulled his patrol car "to the wrong side of the road," parked it "diagonally against the traffic," got out, and told the defendant, who was walking away, to stop. (*People v. Jones*, *supra*, 228 Cal.App.3d at pp. 522-523.) When the defendant reached toward his pocket, the officer "'grabbed his left forearm.'" (*Id.* at p. 522.) As the officer withdrew the defendant's hand from the pocket, he saw a clear plastic bag containing what he suspected was cocaine. (*Ibid.*) The trial court granted the defendant's motion to suppress and the Court of Appeal affirmed because "[a] reasonable man does not believe he is free to leave when directed to stop by a police officer who has arrived suddenly and parked his car in such a way as to obstruct traffic." (*Id.* at p. 523.)

In *People v. Wilkens* (1986) 186 Cal.App.3d 804 (*Wilkens*), a police officer was conducting routine patrol when he observed two occupants of a parked station wagon sliding down in the front seat as if they were trying to hide. The station wagon was parked in a convenience store parking lot. The neighborhood was known for narcotics activity and theft from stores.

The police officer pulled his patrol vehicle diagonally behind the station wagon so that he was blocking the exit of the station wagon. The officer approached the driver's side of the station wagon and requested identification from the occupants. The officer thereafter ran a warrant check and learned that the defendant was subject to a probation search condition. A subsequent search revealed PCP. (*People v. Wilkens*, *supra*, 186 Cal.App.3d at pp. 807-808.) The Court of Appeal concluded that the defendant was detained because the officer positioned his vehicle in such a way that it prevented the exit of the station wagon. (*Id.* at p. 809.)

As the above cases demonstrate, the lower courts have rightly rejected a bright-line rule regarding what specific police action would cause a reasonable person to believe he or she is not free to leave, instead viewing the totality of the circumstances surrounding each incident. (See *Wilson v. Superior Court, supra,* 34 Cal.3d at p. 790 ["'[A] person has been "seized" within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave'"].)

The underlying theme in each of these cases is that an officer's use of red and blue emergency lights, or an officer's act of aggressively blocking in a vehicle, could lead a reasonable person to believe he or she is not free to leave, especially when combined with verbal commands or other affirmative authoritative police conduct. (*People v. Bailey*, *supra*, 176 Cal.App.3d at p. 404-406 [use of red and blue lights, in addition to amber lights, was a detention]; *People v. Wilkens*, *supra*, 186 Cal.App.3d at pp. 807-809 [physically blocking a vehicle's exit was a detention].)

However, absent additional authoritative actions, mere use of a patrol vehicle's spotlights may lead a reasonable person to believe he or she is the object of official police scrutiny, but does not amount to a detention. (*People v. Perez*, *supra*, 211 Cal.App.3d at pp. 1494-1496 [use of high

beams and spotlights does not amount to a detention]; *People v. Rico, supra,* 97 Cal.App.3d at pp. 128-131 [following a car for several minutes while shining a spotlight on the occupants does not amount to a detention]; *People v. Franklin, supra,* 192 Cal.App.3d at pp. 938-940 [use of a spotlight alone does not amount to a detention]; *People v. Garry, supra,* 156 Cal.App.4th at pp. 1111-1112 [use of a spotlight to illuminate a pedestrian amounted to a detention because it was coupled with aggressive police actions and authoritative police questioning]; *People v. Jones, supra,* 228 Cal.App.3d at pp. 522-523 [an officer who approaches very quickly, blocks traffic, issues oral commands, and physically grabs the suspect's arm amounts to a detention].)

Other jurisdictions are in accord. (See, e.g., *State v. Garcia-Cantu* (Tex. 2008) 253 S.W.3d 236, 245 ["use of 'blue flashers' or police emergency lights are frequently held sufficient to constitute a detention" while use of "a patrol car spotlight" does not alone suffice to establish a "seizure" but is a contributing factor]; *Commonwealth v. Smigliano* (Mass. 1998) 694 N.E.2d 341, 343-344 [an officer who activated his blue lights behind the defendant's stopped car and got out of his cruiser to approach "seized" the defendant because "a reasonable person, on the activation of a police car's blue lights, would believe that he or she is not free to leave"]; *State v. Yeargan* (Tenn. 1997) 958 S.W.2d 626, 629-630 [defendant "seized" when a police officer followed him into a parking lot and activated the police car's blue lights].)

In the present case, the specific "lights" used by Deputy Geasland becomes an important factor because the officer did not employ any additional authoritative actions that would have led a reasonable person to believe he or she was not free to leave. The officer did not physically block appellant's vehicle (such as in *Wilkens*), did not quickly and aggressively approach appellant's vehicle (such as in *Jones*), and did not issue

authoritative oral commands (such as in *Garry* and *Jones*). There is similarly no indication that Deputy Geasland used his patrol vehicle's siren after he drove out of the alley or made any statements or oral commands through the patrol vehicle's PA system. Rather, the officer simply pulled up behind appellant's already parked vehicle and activated his vehicle's "lights." (2 RT 14, 28-29.)

Appellant attempts to circumvent the lack of additional authoritative acts by arguing that Deputy Geasland's use of his patrol vehicle's lights alone amounted to a detention. (ABOM 10, 22-23.) Specifically, appellant argues that "a detention occurs any time an officer activates his emergency lights." (ABOM 22, citing *People v. Bailey, supra,* 176 Cal.App.3d at p. 405 ["'A reasonable person to whom the red light from a vehicle is directed would be expected to recognize the signal to stop . . .'"].) Appellant goes on to argue that he was "seized when the deputy activated his emergency lights." (ABOM 23.)

The problem with appellant's line of argument is that it is based on a speculative assumption not supported by the record. As stated above, the record does not state that Deputy Geasland activated his patrol vehicle's "emergency lights," as appellant now assumes. (See 2 RT 14, 28-29.) Indeed, the record does not state what types of lights were available on Deputy Geasland's patrol vehicle, or which specific lights the officer activated behind appellant's parked car. (2 RT 14, 28-29.) Although appellant fully cross-examined Deputy Geasland at the suppression hearing, he asked no questions regarding whether the deputy activated "emergency lights," "overhead lights," red and blue flashing lights, solid lights, amber lights, white lights, or spotlights. (2 RT 20-24.) Appellant now attempts to capitalize on this silence by assuming that the deputy must have activated "emergency lights," and therefore appellant was detained within the meaning of the Fourth Amendment. (ABOM 22-23.)

The applicable standard of review is fatal to the underlying premise of appellant's argument. Contrary to appellant's claim, the record does not state that Deputy Geasland activated his patrol vehicle's "emergency lights." As is well established, when reviewing a trial court's ruling regarding a motion to suppress evidence, an appellate court must draw all factual presumptions in favor of the trial court's ruling if supported by substantial evidence. (See, e.g., *People v. Glaser* (1995) 11 Cal.4th 354, 362 [in reviewing a motion to suppress evidence, an appellate court must defer to a trial court's factual findings, whether express or implied, when supported by substantial evidence]; *People v. Williams, supra,* 45 Cal.3d at p. 1301 [in reviewing a motion to suppress evidence, the deferential substantial-evidence standard applies to questions of fact]; *People v. McDonald* (2006) 137 Cal.App.4th 521, 529[a reviewing court must draw all presumptions in favor of the trial court's express and implied factual determinations where supported by substantial evidence].)

In *People v. Lawler* (1973) 9 Cal.3d 156, 160 (*Lawler*), this court explained the standard of review applicable to reviewing a trial court's ruling on a motion to suppress evidence. Specifically, in *Lawler*, this court explained that a proceeding under Penal Code section 1538.5 to suppress evidence is one in which "'"a full hearing is held on the issues before the superior court *sitting as a finder of fact*." [Citation.]'" (*People v. Lawler, supra,* 9 Cal.3d at p. 160, emphasis in original, citing *People v. West* (1970) 3 Cal.3d 595, 602.) Accordingly, the trial court is vested with the authority to draw factual inferences; on appeal, "all presumptions favor the exercise of that power . . ." (*People v. Lawler, supra,* 9 Cal.3d at p. 160.) Thus, a reviewing court must draw all factual presumptions in favor of not only the trial court's express factual findings, but also in favor of the trial court's implied factual findings. (*Ibid.*) For this reason, once a case is on appeal, the facts are viewed "in the light most favorable to respondent, as is

proper." (*People v. Berkeley* (1978) 88 Cal.App.3d 457, 459, fn.1, citing *People v. Lawler, supra,* 9 Cal.3d at p. 160.)

Here, although an inference could be drawn that Deputy Geasland activated "emergency lights," a reasonable inference could likewise be drawn that Deputy Geasland activated something other than "emergency lights," such as spotlights or high beams. Indeed, as Deputy Geasland stated at the suppression hearing, when he noticed appellant parked on the side of the road, the officer pulled up behind appellant's parked car and turned on his vehicle's "lights basically *just to see* if he was involved, check the welfare." (2 RT 14, italics added.) A reasonable inference from this testimony is that Deputy Geasland would not activate his patrol vehicle's red and blue flashing lights "just to see" whether appellant was involved, but rather would use his vehicle's spotlight to place himself in the best position to observe any indications of involvement or injury.

In any event, as is well established, the factual silence in the record must be resolved in favor of the trial court's ruling, which was that appellant was not detained until after Deputy Geasland approached the car and perceived multiple symptoms of alcohol intoxication. (2 RT 37-38; see *People v. Lawler, supra,* 9 Cal.3d at p. 160; *People v. Glaser, supra,* 11 Cal.4th at p. 362; *People v. McDonald, supra,* 137 Cal.App.4th at p. 529.) Thus, the record does not establish that Deputy Geasland activated his patrol vehicle's "emergency lights," and as already stressed, the evidence must be interpreted to support the trial court's findings. (See, e.g., *People v. McDonald, supra,* 137 Cal.App.4th at p. 529; see also *State v. Garcia-Cantu, supra,* 253 S.W.3d at p. 245 [where the evidence from a suppression hearing is susceptible to various factual inferences, a reviewing court must "give great deference" to the trial court's assessment of the facts and any implicit factual conclusions].)

The Court of Appeal here concluded there is no "material difference between the situation in which a police car pulls in behind a stopped car and activates red lights and one in which the same car uses high beams and spotlights. In both cases there is an apparent showing of police presence and police interest in the occupants . . ." (Slip opn. at p. 11.) Respondent respectfully disagrees with the Court of Appeal's analysis in this regard. A mere showing of "police presence and police interest" falls short of action that amounts to a detention within the Fourth Amendment. For example, if a uniformed police officer approaches a man on the sidewalk and asks if he is willing to answer a few questions, there is undoubtedly a showing of police presence and police interest, but such action does not amount to a detention within the meaning of the Fourth Amendment. (*Florida v. Bostick* (1991) 501 U.S. 429, 434 [103 S. Ct. 1319, 75 L. Ed. 2d 229] ["Our cases make it clear that a seizure does not occur simply because a police officer approaches an individual and asks a few questions."]; *Florida v. Royer* (1983) 460 U.S. 491, 497 ["law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answer to such questions."].)

As outlined above, *Hodari D.* requires two separate factors to establish a non-physical detention: (1) display of law enforcement authority; and (2) submission to that authority. (*Hodari D., supra,* 499 U.S. at pp. 626-629.) As for the first prong, a showing of law enforcement authority turns on the objective question whether the officer's actions would cause a reasonable person to believe he was not free to leave. (*Id.* at p. 628, citing *Michigan v. Chesternut* (1988) 486 U.S. 567, 577, and *United States v. Mendenhall, supra,* 446 U.S. at p. 554.)

Here, in viewing the facts in the light most favorable to the trial court's ruling, Deputy Geasland's actions would not cause a reasonable person to believe he was not free to leave. The officer's conduct was neither aggressive nor intimidating. Rather, Deputy Geasland simply sought to ask appellant some questions to ensure his welfare and determine whether he knew anything about the reported fight involving a loaded firearm. (2 RT 14.) The officer felt that his first effort to contact appellant—as the officer and appellant were driving their moving vehicles in opposite directions—was possibly not heard by appellant. (2 RT 11 ["[A]ppellant just kept going, either his windows were up or he just ignored me."; 2 RT 12 ["I don't know if his window was up or [he] ignored me."].) After the officer considered that appellant possibly did not notice the officer's first effort to communicate, the officer saw that appellant had parked his car on the side of the road. (2 RT 13.) The officer's subsequent act of pulling up behind appellant's parked car and activating his vehicle's "lights" was a continuation of the officer's effort to communicate with appellant.

Deputy Geasland—who was alone—did not turn on his siren, did not draw his weapon, did not issue any oral commands, did not physically block appellant's ability to leave, and did not otherwise engage in any aggressive conduct that would lead a reasonable person to believe he was not free to leave. In fact, Deputy Geasland's actions were even less aggressive than those of the officers in *Perez* and *Franklin*, cases where the Court of Appeal concluded no detention had occurred. As the *Perez* court stated, although the officer's actions in that case "might cause a reasonable person to feel himself the object of official scrutiny, such directed scrutiny does not amount to a detention." (*People v. Perez*, *supra*, 211 Cal.App.3d at p. 1496.) The *Franklin* court similarly held that based on the officer's actions in that case, "appellant rightly might feel himself the object of

official scrutiny. However, such directed scrutiny does not amount to a detention." (*People v. Franklin, supra,* 192 Cal.App.3d at p. 940; see also *People v. Rico, supra,* 97 Cal.App.3d at pp. 130-131.)

The same can be said here. A reasonable person in appellant's position could have correctly felt himself the object of Deputy Geasland's scrutiny, but such a feeling falls short of not being free to leave. Under the totality of the circumstances, Deputy Geasland's act of turning on his patrol vehicle's "lights" behind appellant's parked car did not amount to an official showing of law enforcement authority, as it has been defined by the United States Supreme Court. As such, appellant was not seized within the meaning of the Fourth Amendment at that point in time.

As for the second prong of *Hodari D.*—the requirement there be a demonstrated submission to a showing of police authority—appellant claims he had no effective means to convey his submission. (ABOM 23-25, citing *Hodari D., supra,* 499 U.S. at pp. 626-629.) Initially, appellant argues that if a person in his situation were to drive away, "he violates a failure to yield statute." (ABOM 24.) Not so. Both the crime of failure to yield to an emergency vehicle (Veh. Code, §§ 21806, 42001.12) and evading a pursuing peace officer (Veh. Code, §§ 2800.1, 2800.2) requires the officer be exhibiting a marked patrol vehicle's red light and sounding the patrol vehicle's siren. (Veh. Code, §§ 2800.1, 21806.) As stated above, the record does not indicate that Deputy Geasland exhibited his patrol vehicle's red light. In addition, there was no evidence that Deputy Geasland sounded his patrol vehicle's siren. As such, appellant is incorrect that had he driven away, he would have been subjected to liability for failure to yield to an emergency vehicle or evading a pursuing peace officer.

In any event, even assuming this Court concludes that Deputy Geasland's activation of his patrol vehicle's "lights" amounted to an

official showing of law enforcement authority, appellant has failed to establish the requisite submission to any such showing of authority. In support of his position, appellant cites *Brendlin v. California* (2007) 551 U.S. 249 [127 S. Ct. 2400, 168 L. Ed.2d 132] (*Brendlin*). (ABOM 23-24.) In *Brendlin*, the United States Supreme Court addressed the issue whether a passenger in a vehicle stopped by a police officer is seized within the meaning of the Fourth Amendment. In *Brendlin*, the defendant was a passenger in a moving vehicle that was stopped by police to investigate a possible Vehicle Code violation. (*Brendlin, supra,* 551 U.S. at p. 252.) The driver of the vehicle voluntarily pulled over to the side of the road. (*Ibid.*) The officer approached the vehicle, spoke with the driver and defendant, and returned to his patrol vehicle. (*Ibid.*) The defendant remained in the car during this time. (*Ibid.*) Once the officer returned to his patrol vehicle, he confirmed that the defendant had a no-bail warrant out for his arrest. (*Ibid.*) The officer returned to the vehicle and arrested the defendant. (*Ibid.*) The court ruled that the defendant was detained at the time the moving car came to a stop on the side of the road. (*Id.* at p. 263.)

In dicta within *Brendlin*, the court stated the following:

> [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.

(*Id.* at p. 262.)

Appellant latches onto this passage from *Brendlin* in an effort to argue that he established his submission by not immediately driving away. (ABOM 23-24.) But *Brendlin* is distinguishable from the present case in one important regard: here, unlike in *Brendlin*, once appellant had the opportunity to "terminate the encounter," appellant was undoubtedly under

detention due to the various signs and symptoms of intoxication he was displaying. To clarify, in *Brendlin*, the court stated that where, as here, a purported detention is based on a non-physical display of law enforcement authority, the appropriate focus is not on whether a reasonable person would have felt free to leave, but rather on whether a reasonable person "would have believed himself free to 'terminate the encounter' between the police and himself." (*Brendlin v. California, supra,* 551 U.S. at pp. 256-257.)

Implicit in the high court's language in *Brendlin* is that before a reasonable person would feel he was free to terminate an encounter with the police, he must first be *aware* that he was having an encounter with the police. In *Brendlin*, there was no question the defendant was aware he was engaged in an encounter with law enforcement. Indeed, the defendant in that case was the passenger in a moving vehicle that had pulled to the side of the road pursuant to a traffic stop who thereafter talked with, and provided his identification to, the police officer. (See *Brendlin v. California, supra,* 551 U.S. at p. 252.) Here, however, appellant was parked on the side of the road and appeared previously oblivious to the officer's presence and efforts to initiate communication. (2 RT 11-12.) There is no indication that appellant was even aware of the officer's presence until after the officer approached appellant's car on foot. And as the trial court correctly noted, once Deputy Geasland approached appellant's car on foot, he "fairly immediately" observed several symptoms of intoxication, which gave rise to a detention. (2 RT 37-38.)

As the court in *Brendlin* stated, "what amounts to submission depends on what the person was doing before the show of authority." (*Brendlin v. California, supra,* 551 U.S. at p. 262.) Here, before any purported show of authority, appellant was parked on the side of the road appearing oblivious to the officer's prior efforts to communicate. (2 RT

11-12.) The point at which a reasonable person in appellant's position would have become aware that he was engaged in an encounter with the police was after Deputy Geasland approached appellant's car on foot. Indeed, a person parked on the side of the road who may notice a police car park behind him with its lights on may reasonably think the officer is responding to a nearby residence or otherwise engaging in activities not related to himself or herself.

There must be some additional law enforcement action that directs the officer's actions toward that individual—such as issuing oral commands or questions toward that person or, as here, approaching the car on foot and making contact with the person—before a reasonable person would become aware he or she was engaged in an encounter with the police. Thus, the moment at which a reasonable person in appellant's position would have considered whether he was free to terminate the encounter was the moment at which Deputy Geasland approached appellant's car on foot. As stated, at that point in time, appellant was undoubtedly detained due to the various signs and symptoms of intoxication observed by the officer. (2 RT 37-38.) Because the record fails to establish that appellant demonstrated submission to an official show of police authority, he was not detained within the meaning of the Fourth Amendment at the moment Deputy Geasland turned on his patrol vehicle's "lights." (*Hodari D., supra,* 499 U.S. at pp. 626-629.)

II. DEPUTY GEASLAND WAS JUSTIFIED IN BRIEFLY DETAINING APPELLANT TO INVESTIGATE THE REPORT OF A FIGHT INVOLVING A LOADED FIREARM

Appellant claims the Court of Appeal should have overturned the trial court's denial of his motion to suppress evidence because Deputy Geasland lacked the requisite reasonable suspicion to justify a detention. (ABOM 11-21.) The crux of appellant's argument is that the 911 call should be

treated as an unreliable, purely anonymous tip. (ABOM 11-21.) Respondent disagrees. Initially, contrary to appellant's claim, the 911 call was neither anonymous nor unreliable. Rather, the 911 dispatcher determined the caller's home address through the 911 system and verified that address with the caller. In addition, the 911 caller was not only contemporaneously relaying the facts of the fight as it unfolded, but the 911 dispatcher could actually overhear the fight as it was taking place in the background during the call. As the United States Supreme Court recently ruled in *Navarette v. California* (2014) ___ U.S. ___ [134 S.Ct. 1683, 188 L.Ed.2d 680] (*Navarette*), these factors strongly weigh in favor of both the non-anonymity and reliability of the crime report. (*Id.* at pp. 1688-1690.)

In any event, when Deputy Geasland arrived at the scene—just three minutes after the call—he was justified in briefly questioning appellant to determine whether he knew anything about the reported fight with a loaded firearm. This is so because of, among other reasons: (1) the exigent nature of the call; (2) the quick timing of Deputy Geasland's arrival at the scene; and (3) appellant having been the only person located at the scene. In addition, appellant's actions indicated a possibility he was injured, which provided Deputy Geasland reason to make brief contact with him to ensure his welfare. For these reasons, the Court of Appeal correctly upheld the trial court's denial of the motion to suppress evidence.

A. General Legal Principles

As stated, the Fourth Amendment to the United States Constitution prohibits detentions of persons by law enforcement if they are unreasonable; i.e., not supported by "reasonable suspicion." (U.S. Const., 4th Amend.; *Terry v. Ohio* (1968) 392 U.S. 1, 19 [88 S.Ct. 1868, 20 L.Ed.2d 889].)

To justify an investigative detention, there must be articulable facts leading to a suspicion that some activity relating to a crime is about to

occur and that the person the officer intends to detain is involved in that activity. (*People v. Souza* (1994) 9 Cal.4th 224, 231.) The standard for determining "reasonable suspicion" under the federal Constitution requires a balancing of the public interest served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty. (*Brown v. Texas* (1979) 443 U.S. 47, 50–51 [99 S.Ct. 2637, 61 L.Ed.2d 357]; see also *In re James D.* (1987) 43 Cal.3d 903, 914.) In short, a reasonable suspicion of involvement in criminal activity justifies a temporary stop or detention. (*People v. Souza, supra,* 9 Cal.4th at p. 230; see also *In re Tony C.* (1978) 21 Cal.3d 888, 893; *In re James D., supra*, 43 Cal.3d at pp. 913-914; *Terry v. Ohio, supra*, 392 U.S. at p. 22.)

The reasonable suspicion standard applicable to detentions is "a less demanding standard than probable cause" not only in the sense that reasonable suspicion can be established with information that is "different in quantity or content" than that required to establish probable cause, but also in the sense that "reasonable suspicion can arise from information that is less reliable than that required to show probable cause." (*Alabama v. White* (1990) 496 U.S. 325, 330 [110 S.Ct. 2412, 110 L.Ed.2d 301].) Private citizens who are witnesses to a criminal act, absent some circumstances casting doubt upon their information, are considered reliable. (*People v. Brueckner* (1990) 223 Cal.App.3d 1500, 1504, citing *People v. Ramey* (1976) 16 Cal.3d 263, 269.) "Neither a previous demonstration of reliability nor subsequent corroboration is ordinarily necessary when witnesses to or victims of criminal activities report their observations in detail to the authorities." (*People v. Brueckner, supra*, 223 Cal.App.3d at p. 1504.)

In assessing the reasonableness of an officer's actions, reviewing courts have been instructed to "heed the United States Supreme Court's admonition that the evidence relied on by police officers to justify the

seizure of a person 'must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.'" (*Souza, supra*, at p. 240, quoting *United States v. Cortez* (1981) 449 U.S. 411, 418 [101 S.Ct. 690, 66 L.Ed.2d 621].) Such a determination requires an examination of the totality of the circumstances in each individual case. (*People v. Wells* (2006) 38 Cal.4th 1078, 1083; *Alabama v. White* (1990) 496 U.S. 325, 330 [110 S.Ct. 2412, 110 L.Ed.2d 301] ["to evaluate a detention, the reviewing court must consider the "totality of the circumstances—the whole picture . . ."].)

B. Deputy Geasland Was Justified In Briefly Contacting Appellant

Appellant argues that Deputy Geasland was responding to a purely "anonymous tip" that contained "no indications of reliability . . ." (ABOM 11, 13.) This line of argument is defeated by the United States Supreme Court's recent ruling in *Navarette*. In *Navarette*, the high court explained that the basic principles of Fourth Amendment reasonable suspicion analysis:

> [A]pply with full force to investigative stops based on information from anonymous tips. We have firmly rejected the argument 'that reasonable cause for a[n investigative stop] can only be based on the officer's personal observation, rather than on information supplied by another person.' [Citation.] Of course, 'an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity.' [Citation.] That is because 'ordinary citizens generally do not provide extensive recitations of the basis of their everyday observations,' and an anonymous tipster's veracity is '"by hypothesis largely unknown, and unknowable."' [Citation.] But under appropriate circumstances, an anonymous tip can demonstrate 'sufficient indicia of reliability to provide reasonable suspicion to make [an] investigatory stop.' [Citation.]

(*Navarette v. California, supra*, 134 S.Ct. at p. 1688.)

In *Navarette*, a 911 caller reported that a vehicle had run her off the road. A police officer located the vehicle that the caller identified during the call and executed a traffic stop. (*Navarette*, *supra*, 134 S.Ct. at p. 1686.) The United States Supreme Court held "that the stop complied with the Fourth Amendment because, under the totality of the circumstances, the officer had reasonable suspicion that the driver was intoxicated." (*Ibid.*) Although the caller had provided her name, the recording was not introduced into evidence at the suppression hearing, and the court treated the call as anonymous. (*Id.* at p. 1687, fn. 1.) The court noted that the call bore adequate indicia of reliability to credit the caller's account because the officers were able to corroborate certain details. (*Id.* at p. 1688–1689.) Therefore, the call was sufficiently reliable to create reasonable suspicion of criminal activity, and the officer was "justified in proceeding from the premise that the truck had, in fact, caused the caller's car to be dangerously diverted from the highway." (*Ibid.*)

Notwithstanding the anonymity of the call in that case, the crime report was nonetheless reliable because specifics of the description given by the caller indicated that the caller had eyewitness knowledge of the alleged criminal activity, and "[t]hat basis of knowledge lends significant support to the tip's reliability." (*Id.* at p. 1689.) The high court also concluded there was reason to think the caller was telling the truth because the police confirmed the description and expected location of the suspect, which suggested a contemporaneous report. (*Ibid.*) Finally, the caller had used the 911 emergency system to make the call, and "[a] 911 call has some features that allow for identifying and tracing callers, and thus provide some safeguards against making false reports with impunity." (*Ibid.*)

Here, the fight in the alley involving a loaded firearm was reported via the 911 emergency system. (2 RT 10-11.) Unlike in *Navarette*, a recording

and transcript of the 911 call was admitted into evidence, as was the communications log relaying the information to Deputy Geasland. (2 RT 6-7.) The 911 dispatcher confirmed the caller's address through the 911 system, and verified the address with the caller. (Exhibit 3 [CD of 911 call]. The caller provided a contemporaneous account of the fight as it was unfolding, including that he overheard mention of a loaded firearm. (Exhibit 3 ["One of them says, that hey, he had, it was, it was, the gun was loaded."].) In addition, not only is the fight audibly apparent in the background of the call, but the 911 dispatcher verified that she could in fact overhear the fight as it was taking place. (Exhibit 3 [911 Caller: "[T]hey are fighting right now. You hear the screams?" 911 Dispatcher: "I hear it."].) Furthermore, unlike in *Navarette*—where the officer located the vehicle about 13 minutes after the 911 call was placed (*Navarette*, *supra*, 134 S.Ct. at pp. 1686-1687)—in the present case Deputy Geasland was at the scene only three minutes after the 911 call started. (2 RT 10-11; Exhibit 3.) Thus, as the high court indicated in *Navarette*, both the contemporaneous nature of the call, and the use of the 911 emergency system, strongly support the non-anonymity and reliability of the crime report. (See *Navarette v. California, supra,* 134 S.Ct. at pp. 1688-1690.)

Further, California courts have long held that a 911 call—even one placed by an unknown, unidentified caller—can alone provide adequate reasonable suspicion to justify a brief investigatory detention. In *People v. Dolly* (2007) 40 Cal.4th 458, 462 (*Dolly*), this court was confronted with a situation where an unidentified 911 caller reported seeing a threatening man with a gun. In determining whether this call provided adequate reasonable suspicion to support the police officer's detention of the defendant, the court applied a totality-of-the-circumstances analysis in upholding the detention. (*Id.* at pp. 467-469.) Specifically, the court noted such factors as the "grave and immediate risk" presented when the reporting party

indicates a firearm is involved. (*Id.* at p. 465 [reports involving use of a weapon require "immediate police action" and are "materially distinguishable from the anonymous tips at issue in *Florida v. J.L.* [(2000) 529 U.S. 266 [120 S. Ct. 1375, 146 L. Ed. 2d 254]"].) This court also correctly explained—as later reconfirmed by *Navarette*—that 911 calls are inherently more reliable by virtue of being recorded and verifiable and because such calls "'concern contemporaneous emergency events, not general criminal behavior.'" (*Id.* at p. 467.) Finally, as this court alluded to in *Dolly*, a 911 call is not, as appellant now categorizes it, a general tip regarding believed criminal conduct:

> [T]his case involves a 911 call that was taped. '911 calls are the predominant means of communicating emergency situations' and 'are distinctive in that they concern contemporaneous emergency events, not general criminal behavior. . . . If law enforcement could not rely on information conveyed by anonymous 911 callers, their ability to respond effectively to emergency situations would be significantly curtailed.' (*Holloway*, *supra*, 290 F.3d at p. 1339; see *Terry-Crespo*, *supra*, 356 F.3d at p. 1176 [911 calls are 'entitled to greater reliability than a tip concerning general criminality because the police must take 911 emergency calls seriously and respond with dispatch']; *State v. Golotta* (2003) 178 N.J. 205, 837 A.2d 359, 366 [an anonymous tip placed and processed via the 911 system 'carries enhanced reliability not found in other contexts'].)

(*People v. Dolly, supra*, 40 Cal.4th at p. 467.)

As he did in the Court of Appeal, appellant attempts to distinguish *Dolly* by arguing that, unlike in *Dolly*, the 911 caller in the present case was not personally threatened with a gun. (ABOM 20-21.) This argument misses the point of the exigency involved when there is a report of a firearm being used in ongoing criminal activity. Regardless of whether a 911 caller is reporting having been personally threatened, or is reporting the use of a firearm in an ongoing altercation involving others, a "grave and

immediate risk" is still very much present. (*People v. Dolly, supra,* 40 Cal.4th at p. 465 [a suspect's use of a firearm poses a "grave and immediate risk not only to the caller but also to anyone nearby"].) Indeed, the risk to the public in such a situation is so great that Deputy Geasland would have been derelict in his duties had he not contacted and briefly questioned appellant—the only person in the area just moments after the report came in. And again, contrary to appellant's representation, this was not an anonymous, general tip regarding believed criminal activity. It was a recorded 911 call relaying contemporaneous criminal activity in which the dispatcher could overhear people screaming in the background.

Furthermore, it was not only public safety that was of concern to Deputy Geasland, but also his own personal safety. Indeed, as is well established, courts evaluating the lawfulness of a detention based on officer safety are required to balance the extent of the intrusion upon the individual against the interests of the government, which includes as a significant factor "the interest in minimizing the risk of harm to the officers." (*Michigan v. Summers* (1981) 452 U.S. 692, 702 [101 S.Ct. 2587, 69 L.Ed.2d 340]; see also *People v. Glaser* (1995) 11 Cal.4th 354, 364 [officer safety is a legitimate and important governmental interest to consider in Fourth Amendment analysis].) It is for these reasons that courts have explained that in applying the Fourth Amendment exclusionary rule, courts must be hesitant of making hindsight assessments of how an officer should have responded differently. (E.g., *People v. Wilson* (1997) 59 Cal.App.4th 1053, 1063.) As the United States Supreme Court has stated:

> [In view of the American criminal's]long tradition of armed violence, and every year in this country many law enforcement officers . . . killed in the line of duty, and thousands more . . . wounded . . . we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of

> violence in situations where they may lack probable cause for an arrest.

(*Terry v. Ohio, supra,* 392 U.S. at pp. 23-24.)

Here, any intrusion upon appellant's liberty was minimal and tailored to the important government interests of ensuring public safety and the officer's safety. In fact, the period of time appellant now raises issue with was very brief: the short period of time between when Deputy Geasland activated his overhead lights until Deputy Geasland approached appellant's car and immediately noticed several signs of alcohol consumption. At that point in time appellant had already parked his car on the side of the road and was sitting in the driver's seat. Deputy Geasland did not require appellant to stop a moving vehicle, and he did not require appellant to remain against his will for an unduly prolonged period of time. Rather, Deputy Geasland simply approached appellant in his parked car to ask him about the fight and the gun. As soon as there was contact between Deputy Geasland and appellant, the several perceived symptoms of alcohol intoxication provided additional reasonable suspicion for the detention, if not probable cause justifying an arrest. When viewing the totality of the circumstances, Deputy Geasland had sufficient reasonable suspicion to briefly stop appellant and investigate the reported criminal activity.

Finally, the circumstances of the present case provided Deputy Geasland with reasonable suspicion justifying a brief detention of appellant in order to check on his welfare. That is because the nature of the call involved a violent altercation and a loaded firearm. Deputy Geasland arrived at the scene just minutes after the call and found appellant, a man who appeared aloof and dazed in that he did not recognize or acknowledge Deputy Geasland's initial effort to communicate. Appellant thereafter pulled his car to the side of the road and came to a stop, but left his lights on. In considering the totality of the circumstances, Deputy Geasland had

reason to be concerned that appellant could be injured; he was therefore justified in making brief contact with him to ensure his welfare. (See, e.g., *People v. Ray* (1999) 21 Cal.4th 464, 476-482 [plur. opn. of Brown, J., and concurring opn. of George, C.J.]; cf. also *People v. Higgins* (1994) 26 Cal.App.4th 247.)

For the foregoing reasons, appellant's Fourth Amendment protections were neither implicated nor violated by Deputy Geasland's brief contact to investigate appellant's welfare and whether he was involved in the fight involving a loaded firearm.

CONCLUSION

For the forgoing reasons, respondent respectfully requests this court affirm the judgment of the Court of Appeal.

Dated: February 2, 2015

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached answer brief on the merits uses a 13 point Times New Roman font and contains 11,481 words.

Dated: February 2, 2015

KAMALA D. HARRIS
Attorney General of California

DONALD W. OSTERTAG
Deputy Attorney General
Attorneys for Plaintiff and Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Brown**
No.: **S218993**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On February 2, 2015, I served the attached **ANSWER BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Robert Ford
San Diego County Public Defender's Office
450 B. Street, Suite 1100
San Diego, CA 92101
Attorney for Appellant
Shauntrel Ray Brown
(2 copies)

The Honorable Theodore M. Weathers Judge
San Diego County Superior Court
South County
500 Third Avenue, Department SB-15
Chula Vista, CA 91910

San Diego District Attorney's Office
Appellate Division
330 West Broadway, Suite 1300
San Diego, CA 92101-3826

Appellate Defenders, Inc.
555 West Beech Street, Suite 300
San Diego, CA 92101

Court of Appeal of the State of California
Fourth Appellate District, Division One
750 B Street, Suite 300
San Diego, CA 92101

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 2, 2015, at San Diego, California.

M. I. Salvador-Jett
Declarant


Signature

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