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No. S264219

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Appellant,

v.

LEON WILLIAM TACARDON,
Defendant and Respondent.

Third Appellate District, Case No. C087681
San Joaquin County Superior Court, Case No. STKCRFER20180003729
The Honorable Michael J. Mulvihill, Judge

ANSWER BRIEF ON THE MERITS

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ISSUE PRESENTED

Was defendant detained when a law enforcement officer, on patrol at nighttime, stopped his patrol vehicle behind defendant's legally parked car, used a spotlight to illuminate the car, calmly walked towards the car, and directed a passenger who had abruptly left the car to remain on the sidewalk nearby?

INTRODUCTION

Nighttime encounters between civilians and police officers occur, by definition, with reduced visibility. Using a spotlight to illuminate the surrounding area increases the safety of civilians and officers alike during these encounters, especially when, as here, the civilian is sitting in a parked car. To this end, the spotlight—unlike a patrol car's red and blue emergency lights—does not typically convey a message of authority or force, but rather signals that the officer wants to better see the area.

This reality has led numerous courts to conclude that a civilian sitting in a parked car in public usually is not detained under the Fourth Amendment when, as here, an officer pulls a patrol vehicle behind the parked car, turns on a spotlight, and calmly walks towards the car. There is but a single exception to this long line of cases: *People v. Kidd* (2019) 36 Cal.App.5th 12, in which Division Two of the Fourth Appellate District found that a detention occurs in those circumstances because safety spotlights are equivalent to a patrol vehicle's overhead emergency lights.

Defendant, Leon Tacardon, encourages this Court to adopt *Kidd* as a new constitutional rule for restricting the use of

spotlights to illuminate parked vehicles. But *Kidd* is contrary to the overwhelming weight of authority establishing that a spotlight and an emergency light usually communicate different messages to a reasonable, innocent person. And discouraging patrol officers from using spotlights would frustrate the performance of their duties and increase the risks associated with encounters at night.

Nor does Tacardon offer any other persuasive reason to suppress the evidence in this case. Even under the totality of all the circumstances, Tacardon was not detained until after a law enforcement officer observed contraband in plain view. The officer had not issued any verbal commands to Tacardon, drawn a weapon, blocked his exit path, or otherwise exhibited a show of authority or force directed at Tacardon himself.

STATEMENT OF THE CASE

A. Deputy Grubb found Tacardon in a parked car containing controlled substances, some of which were in plain view

On March 20, 2018, Deputy Grubb of the San Joaquin Sheriff's Office was in uniform and on patrol alone in Stockton. (CT 31-32, 107.) Around 8:45 p.m. that night, he was driving in a marked patrol car in the west area of the city. (CT 32, 107.) The sun was down. (CT 115-116.) Deputy Grubb had turned on the patrol vehicle's high beams, which was his usual practice when patrolling at night. (CT 33, 88, 115-116.)

Deputy Grubb was driving east on Oakridge Way towards Fairway Drive. (CT 33.) He saw a gray car straight ahead of his patrol car on Fairway Drive that was legally parked between two

residences. (CT 33, 87-88.) The car's engine and headlights were off. (CT 89.) Deputy Grubb saw three people in the car: two of them were reclining in the front seats and wearing hooded sweatshirts. (CT 33.) The front windows were opened slightly, and smoke was emanating from the inside of the vehicle. (CT 33, 105.) The rear of the car had tinted windows. (CT 34.)

Deputy Grubb turned his patrol vehicle, "made kind of a U-turn," and parked about 15 or 20 feet behind the car. (CT 33-34, 104.) When turning, he looked at the two individuals in the front seats and saw them looking at him. (CT 104.) The deputy intended to contact the individuals inside the car. (CT 33-34.) As Deputy Grubb parked his patrol vehicle, he turned on the spotlight to illuminate the car. (CT 34, 104-105.) The deputy did not activate his siren or emergency lights. (CT 34, 105.)

Deputy Grubb informed dispatch and, 15 to 20 seconds after parking, he got out of his patrol vehicle and began walking towards the car. (CT 34, 103, 105.) He did not have his weapon drawn and did not issue any commands to the car's occupants. (CT 105.) Smoke was still emanating from inside the car. (CT 105.)

As Deputy Grubb walked towards the car, he saw a female passenger, later identified as M.K., "jump out" of the car from the rear driver's side door. (CT 34, 90-91.) M.K. closed the door behind her. (CT 36, 91.) Deputy Grubb described her as jumping out because, "[i]t was very quick and kind of abrupt the way she opened the door and quickly stepped out. I felt it was unusual."

(CT 106.) The deputy had concerns for his safety. (CT 34, 106-107.)

When M.K. reached the rear of the car, Deputy Grubb asked her what she was doing. (CT 90, 109.) She responded, "I live here." (CT 109.) Deputy Grubb told her to remain near the sidewalk behind the car. (CT 34, 90, 109.) The deputy did so because he wanted to be able to see her and react if she were armed with a weapon. (CT 109-110.) M.K. complied with the deputy's command. (CT 110.) In Deputy Grubb's mind, M.K. and the individuals in the front seats of the car were no longer free to leave. (CT 91-92.)

When speaking with M.K., Deputy Grubb used a "moderate" and "fairly calm" tone of voice. (CT 114.) In other words, his voice "wasn't really elevated." (CT 114.) He did not draw his weapon or reach for his Taser. (CT 114.) Nor did he hold his flashlight like a weapon. (CT 114.)

Almost immediately after speaking with M.K., Deputy Grubb smelled marijuana from inside the car. (CT 48, 93-94, 109.) Deputy Grubb approached the car, turned on his flashlight, shined it towards the back of the vehicle, and saw three large clear plastic bags on the rear passenger's side floorboard. (CT 35, 111.) The bags were of different sizes and contained a green, leafy substance. (CT 35-36, 38-39.) The deputy also saw a dark brown and green custom-rolled cigarette in the center console that contained a green, leafy substance. (CT 36-38.)

Deputy Grubb contacted the two individuals in the car's front seats. (CT 39, 110-111.) Tacardon was sitting in the

driver's seat; he provided his name and indicated that he was on probation. (CT 39-40, 94-95, 100, 102.) The other individual provided his identification to the deputy. (CT 95.) Deputy Grubb directed Tacardon to stay in the car. (CT 97.)

Deputy Grubb returned to his patrol vehicle, conducted a records search, and confirmed that Tacardon was on searchable probation. (CT 40, 97-98, 102-103.) Additional officers arrived, and a probation search of the car was conducted. (CT 112.) The search uncovered the three plastic bags that Deputy Grubb had observed as well as 76 pills of suspected hydrocodone in a storage area near the passenger's side rear door. (CT 40-41, 46.) Tacardon was arrested, and $1,904 was found in his pants pocket. (CT 42.)

Laboratory analysis confirmed that the substance in the plastic bags was marijuana and that the pills were hydrocodone. (CT 54-55, 57.) The three bags contained a total of 696.3 grams of marijuana. (CT 60.) An expert with a narcotics task force opined that both substances were possessed for purposes of sale. (CT 66-67.)

B. The superior court suppressed the evidence, concluding that Deputy Grubb detained Tacardon before seeing any of it in plain view

Tacardon was charged with possession of hydrocodone for sale (Health & Saf. Code, § 11351; count one) and misdemeanor possession of marijuana for sale (Health & Saf. Code, § 11359, subd. (b); count two). (CT 1-3.) He pled not guilty and filed a motion to suppress under Penal Code section 1538.5. (CT 5, 7-18.) The magistrate combined the preliminary hearing with the

hearing on the motion to suppress. (CT 30-134; Pen. Code, § 1538.5, subd. (i).) The magistrate denied the motion to suppress, determining that Tacardon's Fourth Amendment rights were not violated. (CT 131-134.) The magistrate held Tacardon to answer on both charged offenses. (CT 131-134, 141-142.)

Tacardon renewed his motion to suppress in the superior court under Penal Code section 995. (CT 146-167.) The court granted the motion and dismissed the charges. (CT 180.) It determined that Deputy Grubb conducted a consensual encounter when he pulled behind the parked car and turned on his spotlight. (RT 19-25.) But the court concluded that the deputy had detained M.K. by telling her to remain by the sidewalk, that her detention also resulted in a detention of Tacardon, and that reasonable suspicion had not yet arisen. (RT 25.)

C. The Court of Appeal reversed, explaining that Deputy Grubb did not detain Tacardon until after he saw marijuana in plain view

The People appealed the superior court's order. (CT 181.) While the case was pending on appeal, the Fourth Appellate District addressed a similar claim in *Kidd*. In that case, an officer on patrol around 1:30 a.m. observed a parked car on a residential street, made a U-turn in his patrol vehicle, parked about 10 feet behind the parked car, turned on two spotlights, and got out of his patrol vehicle. (*Kidd*, *supra*, 36 Cal.App.5th at p. 15.) The officer smelled marijuana coming from the parked car, conducted a probation search of the vehicle, and discovered numerous items of contraband. (*Id*. at pp. 15-16.) The *Kidd* court held that Kidd, who had been sitting in the driver's seat,

was detained "when the officer made a U-turn to pull in behind him and trained his spotlights on his car." (*Id.* at p. 21.) The court reasoned that "motorists are trained to yield immediately when a law enforcement vehicle pulls in behind them and turns on its lights." (*Ibid.*) This, the court held, was true whether the lights are spotlights, emergency red and blue lights, or other lights: "Regardless of the color of the lights the officer turned on, a reasonable person in Kidd's circumstances" would not have felt free to leave. (*Ibid.*)

Here, the Third Appellate District disagreed with *Kidd* and held that using a spotlight at night in these types of circumstances comports with the Fourth Amendment: "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.'" (Opn. 12, quoting *People v. Perez* (1989) 211 Cal.App.3d 1492, 1496.)

Nor, the court held, "does the fact that the deputy pulled up behind the [parked car], activated the car's spotlight, and approached the vehicle on foot, manifest a sufficient show of authority to constitute a detention." (Opn. 10.) Indeed, the deputy "did not quickly close the gap between himself and [Tacardon] or immediately and aggressively question him rather than engage in conversation." (Opn. 10-11.)

The court then turned to whether Deputy Grubb's subsequent interaction with M.K.—combined with the preceding events—resulted in Tacardon's detention. (Opn. 12.) The court

determined that Deputy Grubb detained M.K. when he ordered her to remain on the sidewalk. (Opn. 12.) But "there is no evidence [Tacardon] observed the deputy's interaction with M.K., or that the deputy conveyed to [Tacardon] that he, like M.K., was required to remain." (Opn. 12.) Thus, "the magistrate's implied finding that [Tacardon] was not detained at this point is supported by substantial evidence." (Opn. 12.) The Court of Appeal vacated the superior court's order and remanded with directions to reinstate the charges and the magistrate's order denying the motion to suppress. (Opn. 14.)

This Court granted Tacardon's petition for review.

ARGUMENT

DEPUTY GRUBB DID NOT CONVERT A CONSENSUAL ENCOUNTER INTO A DETENTION UNTIL AFTER HIS PLAIN VIEW OBSERVATION OF MARIJUANA IN TACARDON'S CAR

Tacardon maintains that Deputy Grubb detained him at any one of three points in time before developing reasonable suspicion that he was engaged in criminal activity. He first relies on *Kidd* in arguing that Deputy Grubb detained him inside the parked car as soon as the deputy illuminated the car with a spotlight. (OBM 23-27.) He next relies on *Kidd* and *People v. Garry* (2007) 156 Cal.App.4th 1100 in arguing that Deputy Grubb confirmed he was not free to leave once the deputy started walking towards the car 15 to 20 seconds after activating the spotlight. (OBM 27-29.) He finally argues that, when Deputy Grubb detained M.K. outside of the car for officer safety reasons, the deputy also detained him and the other occupant inside the car. (OBM 30-34.)

His contentions are unavailing. The use of a spotlight to illuminate an area during a nighttime contact is a rational public safety measure that does not amount to a detention because a reasonable, innocent person would feel free to leave absent other actions by officers that would compel someone to remain. Deputy Grubb, moreover, did not use emergency lights. He calmly approached the car without a show of authority or force, and his exchange with M.K.—even assuming Tacardon saw and heard it—was not directed at Tacardon himself.

A. Legal background

1. The Fourth Amendment does not prohibit consensual encounters

Contacts between law enforcement officers and civilians fall into one of three categories for Fourth Amendment purposes: consensual encounters, detentions, and arrests. (*In re Manuel G.* (1997) 16 Cal.4th 805, 821.) Consensual encounters are interactions where the individual's liberty has not been restrained and the individual may terminate the encounter at any time. (*Ibid.*; *People v. Brown* (2015) 61 Cal.4th 968, 974.) These encounters do not trigger Fourth Amendment protections and require no showing that the person has committed, or is about to commit, a crime. (*Manuel G.*, at p. 821.)

Consensual encounters are not only constitutionally permitted, but they serve "a wide variety of legitimate law enforcement practices." (*United States v. Mendenhall* (1980) 446 U.S. 544, 554 (lead opn. of Stewart, J.).) They occur for a "wide variety of purposes, some of which are wholly unrelated to a

desire to prosecute for crime." (*Terry v. Ohio* (1968) 392 U.S. 1, 13). For example, consensual encounters permit officers to approach and help stranded motorists, lost children, disoriented or injured civilians, or civilians otherwise in distress in public spaces.

Consensual encounters also allow officers to effectively enforce our laws. As the high court has held, "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." (*Florida v. Royer* (1983) 460 U.S. 491, 497 (lead opn. of White, J.); accord, *Florida v. Bostick* (1991) 501 U.S. 429, 434.) This Court has recognized the same: "An officer may approach a person in a public place and ask if the person is willing to answer questions." (*Brown*, *supra*, 61 Cal.4th at p. 974.) It makes no difference if the officer "approaches a person who is on foot or a person who is in a car parked in a public place." (*United States v. Washington* (9th Cir. 2007) 490 F.3d 765, 770.)

When performing their duties, officers may use artificial lighting to enhance their sight—and understanding—of public ongoings. For example, in *Texas v. Brown* (1983) 460 U.S. 730, 740, the high court held that an officer shining his flashlight to illuminate the interior of a stopped vehicle "trenched upon no right secured to the [defendant] by the Fourth Amendment." This Court, too, has held that "the use of a flashlight to

illuminate the interior of the automobile is of no constitutional significance." (*People v. Hill* (1974) 12 Cal.3d 731, 748, overruled on other grounds in *People v. Devaughn* (1977) 18 Cal.3d 889, 896, fn. 5.) And "[n]umerous other courts have agreed that the use of artificial means to illuminate a darkened area simply does not constitute a search, and thus triggers no Fourth Amendment protection." (*Texas v. Brown*, at p. 740.)

2. A consensual encounter becomes a detention if an officer objectively manifests authority over an individual

A consensual encounter becomes a detention when an officer uses physical force or a show of authority to restrain a civilian's liberty. (*Brown*, *supra*, 61 Cal.4th at p. 974.) In situations involving a show of authority, a civilian is seized when, under the totality of the circumstances, a reasonable person would not feel free to leave or otherwise terminate the encounter. (*Ibid*.) The person also must "actually submit[] to the show of authority." (*Ibid.*) "This test assesses the coercive effect of police conduct as a whole, rather than emphasizing particular details of that conduct in isolation." (*Manuel G.*, *supra*, 16 Cal.4th at p. 821.)

In applying this test, the reviewing court upholds the magistrate's factual findings from the suppression hearing when supported by substantial evidence. (*Brown*, *supra*, 61 Cal.4th at p. 975; *People v. Magee* (2011) 194 Cal.App.4th 178, 182-183.) The court then independently answers the question of whether a reasonable person would have felt free to leave or otherwise terminate the encounter. (*Brown*, at p. 975.) Although bright-

line rules do not govern that question (*Michigan v. Chesternut* (1988) 486 U.S. 567, 572), the test has four well-defined markers.

First, the test is objective. (*Chesternut*, *supra*, 486 U.S. at p. 574.) This means that 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." (*Manuel G.*, *supra*, 16 Cal.4th at p. 821; accord, *Brigham City, Utah v. Stuart* (2006) 547 U.S. 398, 404-405.) The objective inquiry ensures "consistent application from one police encounter to the next," and allows "the police to determine in advance whether the conduct contemplated will implicate the Fourth Amendment." (*Chesternut*, at p. 574.)

Second, the "reasonable person test presupposes an *innocent* person"—not a reasonable criminal or a person unreasonably unfamiliar with police-civilian interactions. (*Bostick*, *supra*, 501 U.S. at p. 438.) And although an officer approaching an individual may convey a level of official interest in the person, that does not mean a reasonable, innocent person would not feel free to leave or terminate the encounter. (*Id.* at pp. 434-435.) As one appellate court has summarized: "People targeted for police questioning rightly might believe themselves the object of official scrutiny. Such directed scrutiny, however, is not a detention." (*People v. Chamagua* (2019) 33 Cal.App.5th 925, 929; accord, *Perez*, *supra*, 211 Cal.App.3d at p. 1496; see also *People v. Franklin* (1987) 192 Cal.App.3d 935, 940.)

Third, the fact that many civilians will chose to stay and engage with a police officer does not mean that a reasonable,

innocent person would not feel free to terminate the encounter. "While most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response." (*INS v. Delgado* (1984) 466 U.S. 210, 216.) Thus, the test does not turn, as Tacardon suggests, on whether a reasonable, innocent person is "comfortable" leaving the area (OBM 26), but on whether a reasonable, innocent person who wanted to leave the area would feel free to do so. (*Delgado*, at p. 216.)

Fourth, although there is no bright-line rule distinguishing consensual encounters from detentions, there are numerous long-standing factors. These include whether:

- several officers were present;
- the officer(s) displayed a weapon;
- the officer(s) physically touched the individual; and
- the officer(s) used language, or a tone of voice, that indicated compliance with his or her request was compelled.

(*Mendenhall*, *supra*, 446 U.S. at p. 554; *Manuel G.*, *supra*, 16 Cal.4th at p. 821.) Other relevant factors include the time and location of the contact and whether the officer accuses the individual of a crime, issues a verbal command, blocks the individual's exit path, retains an individual's identification, or displays threatening or intimidating behavior. (See, e.g., *United States v. Drayton* (2002) 536 U.S. 194, 204; *People v. Linn* (2015) 241 Cal.App.4th 46, 58.)

B. Using a spotlight to illuminate a consensual encounter does not transform that encounter into a detention

Tacardon relies primarily on *Kidd* in arguing that Deputy Grubb detained him as soon as the deputy used a spotlight to illuminate the parked car. But *Kidd* was wrongly decided, because it failed to appreciate the significant distinction between spotlights like the one at issue here and overhead emergency lights like the ones at issue in *Brown*.

1. There are physical and legal differences between spotlights and emergency lights

As this Court observed in *Brown*, the Vehicle Code sets forth certain parameters for the lighting on a patrol car. (Veh. Code, §§ 25252 & 25258; *Brown*, *supra*, 61 Cal.4th at p. 978, fn 3.) The Vehicle Code also sets forth parameters for civilians to use spotlights. (Veh. Code, § 24404.) All of these parameters differentiate emergency red and blue lights from spotlights.

The Legislature requires that an emergency vehicle have at least one red warning lamp and also permits the vehicle to have red, amber, white, and/or blue lights. (Veh. Code, §§ 25252, 25258, 25259.) The red light is almost always reserved for use on emergency vehicles. "No person shall display a flashing or steady burning red warning light" on a vehicle, except when an extreme hazard exists, or when used on an emergency vehicle. (Veh. Code, § 25269; see also Veh. Code, § 25102 [mounted side lamps may not be red].) Similarly, the blue light on an emergency vehicle may only be displayed by peace officers in the performance of their duties. (Veh. Code, § 25258, subd. (b)(1).)

Red and blue lights, therefore, carry a distinctive association with law enforcement and official authority. Along those lines, the Legislature requires activation of a red light before a motorist may be convicted of evading a police vehicle. (Veh. Code, § 2800.1; *People v. Hudson* (2006) 38 Cal.4th 1002, 1007-1008.)

By contrast, spotlights are not reserved for emergency vehicles. Rather, civilian vehicles may be equipped with up to two white "spotlamps." (Veh. Code, § 24404.) Civilians may use those lights so long as they are not directed more than 300 feet from the vehicle, at the roadway to the left side line of the vehicle, at an approaching driver, or at a moving vehicle. (Veh. Code, § 24404.) A motorist, moreover, cannot be convicted of evading a police vehicle for failing to yield to a spotlight. (Veh. Code, § 2800.1.)

As these Vehicle Code sections reflect, a spotlight—to a reasonably innocent person—is not interchangeable with a red or blue emergency light. Red and blue lights are reserved for use on an emergency vehicle and play a specific role in police-civilian communications. The blue light is typically located on top of the patrol car, and because it can only be used by a peace officer, conveys the message that a peace officer has arrived. The red light is also typically located on top of the patrol car and conveys a message of authority, i.e., a command to "stop." A spotlight, on the other hand, is a white light regularly attached to the side of the patrol car. It is not exclusively used by law enforcement and does not play a specific role in police-civilian communications. It

usually conveys a basic message of illumination, i.e., its user wants to better see a darkened area.

2. This Court declined an opportunity in *Brown* to hold that spotlights are the same as emergency lights

In *Brown*, this Court explored the important role that emergency red and blue lights play when assessing whether a person in a parked vehicle was detained. There, a deputy sheriff responded to a nighttime emergency call that a fight was in progress in an alley. (*Brown*, *supra*, 61 Cal.4th at pp. 972-973.) As he drove into the alley, the deputy saw Brown driving out of the alley and suspected Brown may have been involved in the fight. (*Id.* at p. 973.) The deputy turned around, drove in the direction Brown's vehicle had taken, and found Brown's car legally parked on the street a few houses down from the house behind which the fight had occurred. (*Id.* at pp. 973, 978.) The deputy pulled behind Brown's car and activated the "overhead emergency lights on his patrol car," which included a combination of red and blue lights. (*Id.* at pp. 973, 978.) The deputy got out of his vehicle and approached Brown's car. (*Id.* at p. 973.)

This Court held that Brown was detained when the emergency lights were activated. (*Brown*, *supra*, 61 Cal.4th at pp. 978-980.) It analogized the circumstances to the traffic stop of a moving vehicle and drew guidance from *Brendlin v. California* (2007) 551 U.S. 249, in which the high court held that a passenger, like the driver, is detained during a traffic stop. (*Brown*, *supra*, 61 Cal.4th at pp. 976-980.) This Court reasoned that emergency lights convey the same message to occupants of a

parked car that they convey to occupants of a moving vehicle—that the occupants are not free to leave. (*Id.* at pp. 978-979.) But the Court declined to endorse a categorical rule and held that deploying emergency lights "in close proximity to a parked car will [not] always constitute a detention of the occupants." (*Id.* at p. 980.)

Notable to Tacardon's circumstances here, the People in *Brown* had argued that the record was ambiguous about whether the deputy had used his patrol car's emergency red and blue lights, solid lights, amber lights, white lights, or spotlights. (*Brown*, *supra*, 61 Cal.4th at p. 978.) This Court could have, like *Kidd* later did, hold that the color and type of the lights that were deployed were immaterial. (*Brown*, at p. 978.) But it did not. Rather, this Court determined that the deputy had specifically deployed his emergency red and blue lights and found meaning in those specific lights. (*Id.* at pp. 978-979.)

3. The conclusion in *Kidd* that spotlights are indistinguishable from emergency lights is contrary to the weight of authority

Although this Court left the issue open in *Brown*, several California appellate courts have recognized that spotlights and emergency red and blue lights often convey different messages to a reasonable, innocent person. Indeed, *Kidd* appears to be the only case anywhere in the nation to equate a spotlight with emergency red and blue lights.

a. Decisions of California state courts

In *People v. Bailey* (1985) 176 Cal.App.3d 402, an officer pulled behind a parked car in a parking lot, "turned on his emergency lights, red and blue in the front and amber to rear," and approached on foot. (*Id.* at p. 404.) After smelling marijuana, the officer searched the car, found contraband, and arrested Bailey. (*Ibid.*) The Sixth Appellate District held that Bailey was detained because a "reasonable person to whom the red light from a vehicle is directed would be expected to recognize the *signal to stop* or otherwise be available to the officer." (*Id.* at pp. 405-406, italics added.)

In *Perez*, an officer in a patrol car in the early evening saw an unlit vehicle in a darkened corner of a motel parking lot. (*Perez*, *supra*, 211 Cal.App.3d at p. 1494.) The officer turned on his high beams and two spotlights, placed the patrol car in front of the parked vehicle (but left an exit path), shone his flashlight into the vehicle, approached the vehicle, and asked Perez, who was in the driver's seat, to roll down the window. (*Ibid.*) The Sixth Appellate District held that Perez was not detained and distinguished spotlights from emergency lights:

> Unlike *Bailey*, the officer did not activate the vehicle's emergency lights; rather, he turned on the high beams and spotlights only. *These differences are substantial* because the 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. [Citations.] Under these circumstances we,

> like the trial court, cannot conclude that use of the lights constituted a detention.

(*Id.* at p. 1496, italics added.)

Similarly, in *People v. Rico* (1979) 97 Cal.App.3d 124, a police officer was driving his patrol car on the freeway shortly after 12:50 a.m. in search of suspects involved in a shooting. (*Id.* at p. 128.) The officer saw a vehicle possibly matching the vehicle involved in the shooting, pulled alongside the vehicle, and turned on his spotlight. (*Ibid.*) After the vehicle pulled to the freeway's shoulder, the officer pulled behind it and again turned on his spotlights. (*Id.* at p. 129.) The Second Appellate District held that the use of the spotlight, combined with the lack of an unequivocal show of authority, was a consensual encounter. (*Id.* at p. 130.)

And in *Franklin*, an officer driving a patrol car shortly after midnight shone his spotlight on Franklin, who was walking down the street, and pulled directly behind him. (*Franklin*, *supra*, 192 Cal.App.3d at p. 938.) The Fifth Appellate District held that "the spotlighting of [Franklin] alone fairly can be said not to represent a sufficient show of authority so that [Franklin] did not feel free to leave." (*Id.* at p. 940.) And the immediate act of pulling the patrol car behind Franklin did not represent "an additional overt action sufficient to convince a reasonable man he was not free to leave." (*Ibid.*) Although Franklin might rightly have felt "himself the object of official scrutiny," that "scrutiny does not amount to a detention." (*Ibid.*)

To be sure, a spotlight can be part of an officer's show of authority when combined with other police techniques. For

example, in *People v. Roth* (1990) 219 Cal.App.3d 211, two officers in a patrol car observed Roth walking in a parking lot around 1:20 a.m. (*Id.* at pp. 213, 215.) The officers shined a spotlight on Roth and stopped their vehicle; one of the officers stood behind the car door, "*commanding* [Roth] to approach so the deputy could speak with him." (*Id.* at p. 215, italics added.) "In this situation, a reasonable person would not believe himself or herself free to leave." (*Ibid.*) And in *Garry*, the court found that a detention occurred because the officer observed Garry standing next to a parked car at night, "bathed" him with a spotlight, "rush[ed] directly at him," and "immediately and pointedly inquired about [Garry's] legal status as he quickly approached." (*Garry*, *supra*, 156 Cal.App.4th at pp. 1111-1112.)

But the officers in *Roth* and *Garry* did not—as Deputy Grubb did here—merely use a spotlight at nighttime while non-aggressively approaching a civilian in public. Rather, the use of a spotlight in *Roth* and *Garry* was combined with either a verbal command, or aggressive behavior, from the officer. Those cases are thus in harmony with *Perez*, *Rico*, *Bailey*, *Franklin*, and the decision of the Court of Appeal below. These cases reflect well-reasoned, guiding principles that emergency lights are not the same as spotlights and that spotlights usually will not convey a show of authority, unless combined with authoritative actions from the officer signaling a detention.

b. Decisions from other jurisdictions

Kidd is not only out of step with California's distinction between spotlights and emergency lights, but it is also an anomaly among other jurisdictions.

Federal courts have regularly held that the use of a spotlight to illuminate the area near a parked car at night does not amount to a detention. For example, in *United States v. Mabery* (8th Cir. 2012) 686 F.3d 591, two officers in a patrol vehicle at 3:00 a.m. saw an occupied car in the parking lot of an apartment complex, stopped, spotlighted the parked car, and turned on the patrol vehicle's rear emergency lights because the vehicle was blocking traffic. (*Id.* at p. 594.) After Mabery fled on foot from the parked vehicle, the officers pursued and arrested him. (*Ibid.*) The Eighth Circuit Court of Appeals held that the circumstances did not "indicate anything more than an otherwise-routine police-citizen encounter—at least until Mabery fled the scene." (*Id.* at p. 596.) And "the act of shining a spotlight on Mabery's vehicle from the street was certainly no more intrusive (and arguably less so) than knocking on the vehicle's window." (*Id.* at p. 597.)

In a similar vein is *United States v. Tanguay* (1st Cir. 2019) 918 F.3d 1. There, the First Circuit Court of Appeals considered the use of floodlights, which typically project broader light beams than a spotlight. The officer in *Tanguay* was on patrol shortly after midnight, stopped his patrol car seven or ten feet behind a parked vehicle in a parking lot, and illuminated the vehicle with floodlights. (*Id.* at pp. 2, 7-8.) The court reasoned that although a floodlight "arguably comes close to communicating some type of

command," precedent "precludes us from treating this type of conduct as a command, perhaps because to rule otherwise would be to prevent officers from safely visiting parked vehicles at night." (*Id.* at pp. 7-8; see also *United States v. Lawhorn* (8th Cir. 2013) 735 F.3d 817, 820 [the "act of shining a spotlight on a person's car typically does not constitute a seizure for purposes of the Fourth Amendment"].)

Other states have reached comparable conclusions. In *State v. Barker* (Idaho 2005) 107 P.3d 1214, an officer on patrol at 2:00 a.m. followed a car until it parked, stopped his patrol vehicle behind the parked car, and briefly shined a spotlight at the driver's side rear window before directing the spotlight at the rear portion of the car. (*Id.* at p. 1215.) The Idaho Supreme Court surveyed numerous decisions from other states and held that these circumstances were not a detention. (*Id.* at p. 1218.) The court joined "the many other jurisdictions which have held that the use of a spotlight alone would not lead a reasonable person to believe that he was not free to leave, though it may be considered under the totality of the circumstances." (*Ibid.*) The court added: "We agree with the State that an officer is not constitutionally required to choose between a consensual encounter in the dark or turning on a spotlight and thereby effectuating a detention that may not be supported by reasonable suspicion." (*Ibid.*)

In accord is *State v. Iversen* (S.D. 2009) 768 N.W.2d 534. There, an officer on patrol at 1:30 a.m. pulled into a parking lot, focused his patrol vehicle's spotlight on a parked truck, and got

out of his vehicle to make contact with the occupants of the truck. (*Id.* at p. 535.) This contact, the South Dakota Supreme Court held, was not a detention: "[t]he officer merely approached a parked vehicle, which the Fourth Amendment permits, and Iversen simply encountered a police officer in a public place." (*Id.* at p. 539.) Consistent with the reasoning in *Barker* and *Iverson*, state courts across the nation have routinely found a detention does not occur simply because an officer parks near a parked car, turns on a spotlight, and calmly approaches on foot. (See, e.g., *R.F. v. State* (Fla.Dist.Ct.App. (2020) 307 So.3d 20, 24; *People v. Jordan* (Ill.Ct.App. 2019)160 N.E.3d 1006, 1012, 1018-1019; *State v. Shern* (Ohio Ct.App. 2018) 126 N.E.3d 322, 330-331; *Illi v. Commissioner of Public Safety* (Minn.Ct.App. 2015) 873 N.W. 2d 149, 151-153; *Branham v. Commonwealth* (Va. 2012) 720 S.E.2d 74, 76, 78; *State v. Merchant* (Mo.Ct.App. 2011) 363 S.W.3d 65, 67, 70.)

Juxtaposed against these cases are the cases where federal or other state courts have found detentions when a spotlight was used. Like California appellate courts, those courts have usually found detentions of an occupant of a parked car in a public space when a spotlight was combined with verbal commands, red lights, or other actions constraining a civilian's movement, such as blocking the parked vehicle's exit path. (See, e.g., *United States v. Stover* (4th Cir. 2015) 808 F.3d 991, 997 [spotlight, drawn weapons, emergency lights, and blocked exit path]; *Smith v. State* (Fla.Ct.App.2012) 87 So.3d 84, 87-88 [patrol car parked "catty corner" to civilian vehicle, spotlight, and emergency lights];

Johnson v. State (Tex.Crim.App.Ct. 2013) 414 S.W.3d 184, 193 [spotlight, partially blocked exit path, and authoritative request for identification].)

All of this authority reinforces two core conclusions: (1) the Court of Appeal here correctly recognized that spotlights are not the same as emergency lights to a reasonable, innocent person; and (2) *Kidd*'s reasoning has no support among existing caselaw. This Court should disapprove *Kidd*, reject Tacardon's request to equate emergency lights with spotlights, and hold that Tacardon was not detained when Deputy Grubb pulled his patrol vehicle 10 to 15 feet behind the parked car, turned on a spotlight to illuminate the area, and began non-aggressively walking towards the car.

4. The conclusion in *Kidd* also undermines public safety and safe, effective policework

There are still more reasons why this Court should disapprove *Kidd*. Namely, *Kidd* thwarts public safety, undermines officer safety, and impedes proper, effective law enforcement practices.

(1) Spotlights promote public safety

The "safety and indeed the lives of its citizens" is a "primary concern of every government." (*United States v. Salerno* (1987) 481 U.S. 739, 755.) Consistent with these concerns, civilians need officers to be able to safely approach them and properly light the area when doing so. Many roads, especially rural ones, are dark or poorly lit. Civilians may find themselves sitting in their parked vehicles on these roadways for a variety of reasons,

ranging from a medical emergency to a broken-down vehicle. In these situations, patrol officers are expected to respond and, if necessary, can provide invaluable aid, whether it be performing CPR, arranging for an ambulance, or assisting with a tow service.

Society also needs officers to be able to approach occupants of a parked car when ferreting out criminal activity. Civilians in parked vehicles can be witnesses to a crime, know the location of, or direction taken by, a dangerous criminal, possess information allowing officers to separate guilty parties from innocent ones, or can themselves be engaged in nefarious behavior. As the high court has emphasized, without the ability to try to contact occupants of a parked vehicle, "those who were innocent might be falsely accused, those who were guilty might wholly escape prosecution, and many crimes would go unsolved." (*Mendenhall*, *supra*, 446 U.S. at p. 554.) "In short, the security of all would be diminished." (*Ibid.*)

A spotlight serves numerous public safety functions when an officer needs to approach a parked vehicle at night. First, by illuminating the area, it allows the civilian to see that a uniformed peace officer, trained in using a spotlight to avoid silhouetting, is approaching. That knowledge assures the civilian that a potentially dangerous and unpredictable stranger is not approaching. And the sight of a uniformed police officer "in many circumstances [] is cause for assurance, not discomfort." (*Drayton*, *supra*, 536 U.S. at p. 204.) Without clear lighting, civilians may think that a random stranger—with unknown motives—has

pulled behind their vehicle. Spotlights deescalate this unpredictability.

Second, the spotlight enhances the ability of the civilian to see the officer's actions and vice versa. This reduces the chance that either the civilian or the officer will misinterpret each other's actions. For example, a spotlight allows the civilian and officer to read each other's body language and facial expressions. And it allows the civilian and officer to better see each other's gestures and hand movements, thus reducing the chance that either of them will needlessly draw a weapon or otherwise initiate aggression.

Third, the spotlight helps alert passing civilians and passing vehicles of the situation. The spotlight lets drivers know that there are vehicles parked on the side of road and affords them time to slow down and provide extra space for those vehicles. This is particularly beneficial on dark, narrow, and windy roads, where visibility, reaction time, and space are at a premium. Spotlights similarly alert passersby of the situation, which allows them to provide space to the persons involved.

(2) Spotlights promote police officer safety and effectiveness

"Effective law enforcement" practices are substantial government interests. (*Wyoming v. Houghton* (1999) 526 U.S. 295, 304.) The Fourth Amendment therefore is applied so as not to unduly impair or hamper sound police work. (*Ibid.*; *United States v. Sokolow* (1989) 490 U.S. 1, 10-11.)

When effectively doing their jobs, officers need not unreasonably surrender their personal safety. The "police

officer's need to ensure his or her safety while engaged in investigation or other activities" is an important government interest. (*People v. Glaser* (1995) 11 Cal.4th 354, 364.) Officer safety is not only a "legitimate" interest but also a "weighty" one. (*Pennsylvania v. Mimms* (1977) 434 U.S. 106, 110.) For that reason, "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*, *supra*, 392 U.S. at p. 24.) "Certainly it would be unreasonable to require police officers to take unnecessary risks in the performance of their duties." (*Id.* at p. 23.)

Kidd, however, impedes officers' ability to effectively and safely perform their duties at night. As discussed *ante*, street encounters are a core aspect of conscientious police work. But those encounters are diverse and "range from wholly friendly exchanges of pleasantries or mutually useful information to hostile confrontations of armed men involving arrests, or injuries, or loss of life." (*Terry*, *supra*, 392 U.S. at p. 13.) Given the "danger that inheres in on-the-street encounters," police often need to "act quickly for their own safety." (*Maryland v. Buie* (1990) 494 U.S. 325, 334, fn. 2.) Vehicles can be particularly worrisome to officers because there is an "inordinate risk confronting an officer as he approaches a person seated in an automobile." (*Mimms*, *supra*, 434 U.S. at p. 110.) The unpredictability and potential dangers of a street encounter are

even more stark when, as Deputy Grubb was here, a police officer is on patrol alone, at nighttime.

Spotlights, like flashlights or other artificial lights, are necessary for police officers to mitigate these dangers and accurately and safely perform their duties at night. Illuminating their surroundings permits officers to maximize their lines of sight and obtain a deeper, more accurate assessment of the situation. (See, e.g., *Texas v. Brown*, *supra*, 460 U.S. at pp. 739-740; *Barker*, *supra*, 107 P.3d at p. 1218.) By using a spotlight, this assessment can begin from the relative safety of the patrol vehicle and continue as the encounter progresses.

With an accurate understanding of the area, officers become better equipped to determine whether their intervention is appropriate, and if so, how best to proceed in fulfilling their duty to proactively protect the public without unnecessarily endangering themselves. For example, sufficient lighting helps officers accurately and quickly observe—and interpret—any physical movements by civilians. This enables officers to know whether any movements are either hostile or benign. And that knowledge both allows officers to protect themselves against any sudden aggression and to avoid misinterpreting non-aggressive gestures for aggressive ones.

Adequate lighting thus helps officers to better make the "swift, on-the-spot decisions" often required in police work. (*Brown*, *supra*, 61 Cal.4th at p. 987, quoting *Sokolow*, *supra*, 490 U.S. at p. 11.) As one court has aptly observed, the spotlight "is frequently necessary to protect officers during any type of night-

time police-citizen encounter." (*State v. Garcia-Cantu* (Tex.Crim.App.Ct. 2008) 253 S.W.3d 236, 245, fn. 43.) Or as *Barker* put it: the illumination from a spotlight "can significantly enhance officer safety." (*Barker*, *supra*, 107 P.3d at p. 1218.)[1]

Kidd disregards these realities and makes nighttime vehicle approaches more dangerous and less effective. *Kidd* encourages officers to either ignore the situation for fear of violating the Fourth Amendment or approach the situation in the shadows. Put differently, "[h]olding that an artificially lighted nighttime approach is a seizure would therefore do little more than pressure nighttime officers to perform the same dangerous duties unsafely, in the dark." (*Illi*, *supra*, 873 N.W.2d at p. 153.) And finding a detention merely because officers pull in behind a parked car and turn on a spotlight would effectively stop them from safely encountering civilians in parked cars at night. (*Tanguay*, *supra*, 918 F.3d at pp. 7-8; *Barker*, *supra*, 107 P.3d at p. 1218.)

Kidd thus creates many hours each day where officers could not safely engage in necessary consensual encounters with civilians in parked vehicles. Take, for example, a motorist who is lost while traveling at night on a dark, rural road in an area with poor cell phone reception. The motorist legally parks on the side

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[1] Because the encounters here and in *Kidd* occurred at night, the People focus on how *Kidd* impedes civilian and officer safety in the darkness of night. But, of course, similar safety concerns may arise in darkened daytime conditions where visibility is impaired.

of the road in hopes of having sufficient cell phone reception to contact a friend for help or access a map. Under *Kidd*, a passing patrol officer that wanted to check whether the motorist needed assistance would have to approach without the aid of a safety spotlight or risk violating the Fourth Amendment. Or take the example of an officer driving on patrol at night and learning that a Silver Alert had issued because a senior citizen with dementia was missing. Under *Kidd*, the officer could not stop behind an occupied parked car near the individual's last known whereabouts, turn on a spotlight, and approach the occupants of the car to ask about whether they had seen the lost individual.

Kidd's undermining of public safety, officer safety, and effective law enforcement practices are more reasons for this Court to reject its outlier conclusion. This Court should decline to force officers to choose between discontinuing nighttime consensual encounters with occupants of a parked vehicle or discontinuing the use of safety spotlights that protect civilians and officers alike during nighttime encounters. And this Court should join the Court of Appeal here, other California appellate courts, federal courts, and other state courts in holding that—without more—a detention typically will not arise when an officer pulls behind a legally-parked vehicle at night, illuminates the area with a spotlight, and calmly approaches on foot. So holding will end *Kidd*'s disruption to California's long-standing distinction between nighttime use of spotlights and nighttime use of emergency lights and reharmonize California with federal and out-of-state courts.

C. Conducting a consensual encounter "as soon as possible" does not transform that encounter into a detention

Tacardon next contends he was detained because Deputy Grubb, after making eye contact with him and turning on the spotlight, "approached his car as soon as that was possible." (OBM 27-29.) Tacardon again misses the mark.

To begin with, Tacardon misconstrues the nature of Deputy Grubb's approach of the parked car. The deputy did not approach the car as soon as possible, but rather, took the time to radio dispatch from his patrol vehicle after parking. (CT 34, 103, 105.) It was not until 15 or 20 seconds after parking his patrol vehicle that Deputy Grubb got out and began calmly walking towards the car. (CT 34, 103, 105.)

Tacardon next turns to *Garry* and *Kidd* for support, but neither decision helps him. In *Garry*, an officer in a patrol car watched Garry stand next to a parked car for five or eight seconds; the officer suddenly "bathed" Garry's person in a spotlight and "briskly walked 35 feet in two and one-half to three seconds directly to him while questioning him about his legal status." (*Garry*, *supra*, 156 Cal.App.4th at pp. 1104, 1111.) The court held a detention had occurred because "any reasonable person who found himself in [Garry's] circumstances, suddenly illuminated by a police spotlight with a uniformed, armed officer rushing directly at him asking about his legal status, would believe themselves to be under the compulsion of a direct command by the officer." (*Id.* at p. 1112, internal quotation marks and citation omitted.)

But *Garry* did not identify the time between when the officer parked the patrol vehicle and when he exited the vehicle, let alone draw any meaning from that time. (*Garry*, *supra*, 156 Cal.App.4th at pp. 1104, 1112-1113.) Rather, the officer's other, "very intimidating" actions were the reasons a detention occurred. (*Ibid.*) And those actions were in stark contrast to Deputy Grubb's actions. The deputy here did not bathe Tacardon's person with a spotlight or rush at him while asking him questions. Tacardon, moreover, was sitting in a parked car with two other occupants, not standing by himself out on the street. Deputy Grubb, in fact, only had parked 15 to 20 feet behind Tacardon's car, illuminated the area around the car with a spotlight, and began calmly approaching.

As for *Kidd*, Tacardon emphasizes dicta in which that court, after erroneously holding that the mere use of the spotlights resulted in a detention, further stated that "any ambiguity" from those lights "was removed when the officer more or less immediately exited his patrol vehicle and began to approach Kidd's car." (*Kidd*, *supra*, 36 Cal.App.5th at p. 21.) *Kidd* again is unavailing. Nothing in the Fourth Amendment requires an officer to wait a certain amount of time between observing a civilian in public and approaching that individual. And Deputy Grubb leaving his patrol vehicle 15 to 20 seconds after parking simply reflected his interest in approaching the area he had illuminated with the spotlight. Those actions are wholly consistent with an officer's ability to convey a level of official scrutiny or interest in civilians in public places without detaining

them. (*Bostick*, *supra*, 501 U.S. at pp. 434-435; see also *Chamagua*, *supra*, 33 Cal.App.5th at p. 1496 [directed scrutiny is not a detention].) Further still, *Kidd* appears to be the only case in the nation to suggest that a law enforcement officer getting out of a patrol car soon after turning on a spotlight would constitute a detention of an occupant of a parked car. (See *ante*, section I.B.3.)

Finally, Tacardon wrongly tries to draw meaning from the fact that he and Deputy Grubb exchanged eye contact as the deputy drove by the parked car. (OBM 29.) Eye contact is hardly a coercive show of authority. It is an inevitable aspect of an officer's constitutional ability to approach civilians in public and ask them questions. (*Bostick*, *supra*, 501 U.S. at p. 434; *Brown*, *supra*, 61 Cal.4th at p. 974.) And there is no evidence that Deputy Grubb used his eyes in a threatening or authoritative manner or any other way so as to convey a show of force or authority.

D. Detaining a person who abruptly leaves a parked car does not automatically detain the remaining occupants of the car

Tacardon argues that the detention of M.K., for officer safety reasons, also resulted in his own detention. (OBM 30-33.) This argument, however, asks this Court to presuppose that Tacardon saw and heard the exchange between M.K. and Deputy Grubb. The magistrate did not make a factual finding that Tacardon heard (or even saw) the exchange with M.K. And although the superior court appears to have assumed Tacardon heard the exchange (RT 25), it could not, as a reviewing court, make a

factual finding to that effect. (*People v. Laiwa* (1983) 34 Cal.3d 711, 718.)

As the Court of Appeal accurately observed: "there is no evidence [Tacardon] observed the deputy's interaction with M.K., or that the deputy conveyed to [Tacardon] that he, like M.K., was required to remain." (Opn. 12.) Indeed, smoke was inside the parked car; Tacardon was reclining and wearing a hooded sweatshirt in the driver's seat; the front windows were only "open a small amount;" M.K. had closed the rear driver's side door after abruptly leaving the car; the deputy used a moderate tone of voice with M.K.; and the exchange occurred near the rear of the car—not next to the driver's side door. (CT 33-34, 36, 90-91, 108-109, 114, 131.) And without evidence that Tacardon heard what Deputy Grubb told M.K., he did not know whether M.K. stopped walking on her own accord or because of what the deputy had told her to do.

In any event, there was no detention even assuming Tacardon saw and heard the exchange between M.K. and Deputy Grubb. Fourth Amendment rights are personal and "are violated only when the challenged conduct invaded [a defendant's] legitimate expectation of privacy rather than that of a third party." (*United States v. Payner* (1980) 447 U.S. 727, 731.) To that end, the high court has recognized that even the *arrest* of a defendant's nearby companion does not mean that the defendant was detained: "The arrest of one person does not mean that everyone around him has been seized by the police." (*Drayton*,

supra, 536 U.S. at p. 206.) Thus, M.K.'s detention does not mean that Tacardon was also detained.

Further, Deputy's Grubb actions were directed only at M.K. and only followed her abrupt and unusual exit from the parked car. When speaking in a moderate tone of voice to M.K., the deputy did not gesture towards the parked car or towards Tacardon. The deputy also did not command that Tacardon, like M.K., needed to remain on the sidewalk. And Deputy Grubb did not issue any orders restricting Tacardon's movement, such as directing him to exit the car, to not move, to show his hands, or to remain in the car.

Given these circumstances, Tacardon inaptly tries to analogize M.K.'s detention, for officer safety concerns, to the circumstances in *Roth*. (OBM 31.) A detention occurred in *Roth* when two officers in a patrol car saw Roth walking in a parking lot, one officer shined a spotlight on Roth, the officers stopped the patrol car, both officers got out, and one officer verbally commanded Roth to approach him. (*Roth*, *supra*, 219 Cal.App.3d at p. 215.) Here, however, Deputy Grubb was the only officer present, a spotlight illuminated a vehicle, not Tacardon's specific person, and Deputy Grubb issued no verbal commands towards Tacardon himself. As a result, the fact that the deputy had detained M.K. after she abruptly and unexpectedly exited the car does not mean that he also detained the other occupants, including Tacardon, who remained in the car.

E. Viewing the totality of the circumstances, Tacardon was not detained until after reasonable suspicion arose

The Court of Appeal concluded that Tacardon was detained when Deputy Grubb, "after smelling marijuana coming from the BMW and seeing three large bags of the substance on the rear floorboard, told [Tacardon] to remain in the car while he conducted a records check." (Opn. 13.) "At that point, there can be no doubt the deputy possessed reasonable suspicion [Tacardon] was engaged in criminal activity." (Opn. 13.) Because Tacardon does not dispute these conclusions, he can only prevail if the totality of the circumstances before Deputy Grubb smelled and saw the marijuana constituted a detention. They did not.

Before smelling and seeing the marijuana, Deputy Grubb had (1) been driving his patrol car with its high beams on; (2) turned his patrol car and made eye contact with Tacardon and the individual in the front passenger seat; (3) parked 15 to 20 feet behind the parked car; (4) turned on the spotlight; (5) started walking towards the parked car; and (6) in a moderate tone of voice, told M.K., who had abruptly left the parked car, to remain near the sidewalk.

None of the traditional hallmarks of a detention are present in these circumstances. (*Mendenhall*, *supra*, 446 U.S. at p. 554; *Drayton*, *supra*, 536 U.S. at p. 204; *Manuel G.*, *supra*, 16 Cal.4th at p. 821.) Deputy Grubb had not executed a traffic stop or otherwise stopped, or diverted, the parked car's movement. (Compare *Brendlin*, *supra*, 551 U.S. at p. 251 [traffic stop detains occupants of vehicle].) He had not activated his emergency lights

or sirens and had not aggressively or rapidly walked towards the parked car. The deputy also had not issued any verbal commands to Tacardon himself, accused him of any crime, questioned him, or used a loud, harsh, or accusatory tone of voice. In fact, the deputy had not spoken to Tacardon in any way.

Further, Deputy Grubb had not made any gestures towards Tacardon or summoned him to the deputy's location. Nor had the deputy touched Tacardon's person, taken his identification or other property, stopped or impeded his movements, or taken any action forcing him to move or relocate his person. Indeed, Tacardon remained in the same precise location he was in before the deputy arrived—sitting in a parked car on a public street with the engine off.

What's more, Deputy Grubb had not displayed a weapon, made a show of force, threatened Tacardon, blocked the car's exit path, or blocked Tacardon's ability to walk away from the area. And the deputy was the only officer in the vicinity at the time. Under the totality of these circumstances, Tacardon was not detained before reasonable suspicion arose.

Based on all of the foregoing, a reasonable, innocent person in Tacardon's situation would have felt free to leave or otherwise terminate the encounter before the point that reasonable suspicion arose, specifically when Deputy Grubb smelled and saw the marijuana. The Court of Appeal, therefore, properly reversed the superior court's dismissal order and reinstated the charges against Tacardon.

CONCLUSION

For these reasons, the judgment of the Court of Appeal should be affirmed.

Respectfully submitted,

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May 12, 2021

CERTIFICATE OF COMPLIANCE

I certify that the attached **ANSWER BRIEF ON THE MERITS** uses a 13 point Century Schoolbook font and contains 9,588 words.

ROB BONTA
Attorney General of California

/S/ Christopher J. Rench

CHRISTOPHER J. RENCH
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May 12, 2021

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DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **People v. Tacardon**
No.: **S264219**

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 collecting and processing electronic and physical correspondence. 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. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On May 12, 2021, I electronically served the attached **ANSWER BRIEF ON THE MERITS** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on May 12, 2021, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Paul Kleven
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Berkeley, CA 94707
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Clerk of the Superior Court
County of San Joaquin
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Stockton, CA 95202

The Honorable Tori Verber-Salazar
San Joaquin County District Attorney
P.O. Box 990
Stockton, CA 95202

California Court of Appeal
Third Appellate District
914 Capitol Mall, 4th FLoor
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on May 12, 2021, at Sacramento, California.

/S/ B.Thalken
Signature

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Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 5/12/2021 by M. Chang, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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Supreme Court of California

Case Name: **PEOPLE v. TACARDON**
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1. At the time of service I was at least 18 years of age and not a party to this legal action.

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Date

/s/Blayne Thalken
Signature

Rench, Christopher (242001)
Last Name, First Name (PNum)

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