IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff/Respondent, v. SHAUNTREL BROWN, Defendant/Petitioner	No. S218993 Ct. App. No. D064641 (Trial Ct. No.: SCS264898)

PETITIONER'S REPLY BRIEF ON THE MERITS

The Honorable Ana Espana

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Alternatives to Detention – second Thursday of the month, 10 to 11, South Bay Community Services Ken Lee Building at 430 F St., Chula Vista; next meeting **August 14**

TERM Advisory Board – third Monday of the month, 8 to 9:30, Optum Health Care building, 3111 Camino del Rio North, Suite 500; next meeting **August 18**

Restorative Justice Steering Committee – every other month, third Monday from 1 p.m to 2 p.m., 4305 University Ave., next meeting **August 18**

Restorative Justice Community meeting – third Tuesday per month at 9 a.m., Probation Department; next meeting **August 19**

Delinquency Policy Group -- quarterly, usu Wednesday at 12:15 in D2, next meeting TBD

Blue Ribbon Commission - 7:30 D-1

Other Pending Meetings/Trainings/Cases

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Trauma Informed Care Training from 1 to 5 – **July 28**

Andy Briggs – status conference **August 6** 1:30 D1 SAMS kid

- ck Manon V transp?

Tour of JRF with Keith Hicks – **August 12** at 1:30; told Mr. Hicks I would get a head count and follow up with him the week before to get the exact address, parking info, any special instructions re: how to dress, etc; so far the people who want to go are: Marie, Audrey, Micaela, Kierre, Sierra, and Desirae

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Assign cases
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SUMMARY

Deputy Geasland had no descriptions of alleged fighters in an alley, and he initially saw Mr. Brown as a potential witness. Deputy Geasland posed questions to Mr. Brown as they passed each other in the alley. Mr. Brown avoided this consensual encounter in a manner prescribed by law—he ignored the questions and continued on his way. Deputy Brown did not take "no" for an answer—he turned around and purposely activated his lights behind Mr. Brown's parked car so he could to get answers. Respondent casts Mr. Brown's avoidance of the encounter as proof that he was dazed and in need of assistance. The Court of Appeal cast Mr. Brown's refusal to answer questions as arousing the Deputy's suspicions. Established case law does not allow a refusal to cooperate to be used as a basis for a detention—to do so would eviscerate the logic that distinguishes a consensual encounter

from a detention. Can a "consensual encounter" be coerced with emergency lights?

Additionally, Respondent did not respond to the first issue presented by Mr. Brown in his opening brief: Are facts known only to a civilian 911 operator properly imputed to an officer in the field? Instead, Respondent attempts to justify the detention based upon information Deputy Geasland never received. How can an officer's suspicions be justified by information he never knew?

Respondent retreats from the Fourth District Court of Appeals opinion that the color of a patrol officer's overhead light is insignificant when determining whether a driver of a parked car would feel free to avoid contact with the officer. Respondent sidesteps the issue by making a new argument—the record fails to describe the color of the lights activated by the deputy. This argument fails to appreciate Deputy Geasland activated the same lights he would use to effectuate a traffic stop on a moving vehicle.

Respondent then argues Mr. Brown failed to notice the lights and was therefore not detained. But there is no evidence Mr. Brown was surprised by the Deputy's appearance at his window. Does Mr. Brown bear the burden of proof that he noticed emergency lights?

Finally, Respondent argues that the Deputy was performing a community caretaking function because he had a hunch Mr. Brown was injured. Respondent fails to consider that the Deputy observed no injuries during the initial encounter.

STATEMENT OF DISPUTED FACTS

Deputy Geasland was working as a patrol officer on May 26, 2013. (2R.T., 10.) Deputy Geasland testified that he activated his lights. (2R.T., pp. 14, 17.) Defense counsel submitted Deputy Jackson's testimony from

the preliminary hearing with prior inconsistent statements from Deputy Geasland indicating that he had stopped Mr. Brown. (2R.T., 27.) The trial court then personally examined Deputy Geasland to clarify whether activating his lights detained Mr. Brown:

> The Court: "When you activated your lights behind a vehicle, does that formalize the stop in any way in your mind?"
>
> Deputy: "As far as still being, like, a traffic stop or still being... I guess if he is – If I turn my lights on and has already stopped, then I guess it can be considered the same thing, as a far as a traffic stop."
>
> The Court: "It's a traffic stop?"
>
> Deputy: "I guess, even though he is still the – well, if he's parked, but I didn't see him drive at that point. I saw him drive out. But you know there is – I guess it depends on that, on that one, I guess you can kind of consider it – I knew he had just stopped, because we do, too, stop parked vehicles as well, so." (2R.T., pp. 28-29.)

ARGUMENT AND AUTHORITIES

I.

DEPUTY GEASLAND INITIATED A TRAFFIC STOP.

Respondent filed a request for publication of the opinion below, but now retreats from the foundational premise contained in the Fourth District Court of Appeal's decision—Deputy Geasland activated his patrol car's overhead emergency lights. The Court of Appeal rejected the notion that there is a material difference between the activation of red lights or the use of high beams and spotlights. "In both cases there is an apparent showing of police presence and police interest in the occupants of the stopped vehicle. In both instances there is a clear likelihood that police will give chase if the

person drives off." (See Slip opn. at p. 11.) Respondent now disagrees with the court's analysis (See Answer Brief on the Merits (A.B.M.) p. 21.)

Respondent recognizes the court's analysis would weaken the holding in *People v. Perez* (1989) 211 Cal.App.3d 1492: "While the use of high beams and spotlights might cause a reasonable person to feel himself the object of official scrutiny, such scrutiny does not amount to a detention." (*Id.* at p. 1496.) By the court of appeal's analysis, any citizen who signaled submission to police presence and interest when bathed in police high beams and spot lights would be detained. Respondent recognizes such a holding would impact the future analysis of many so called consensual encounters that would be deemed a detention.

Respondent retreats from the red light versus white light analysis by attempting to change the factual basis of the ruling. For the first time, Respondent claims the record did not establish the specific color of the lights Deputy Geasland activated. (See A.B.M., at pp. 1, 5, 8, 18, 19, 23.) In prior briefings, Respondent accepted the fact that Deputy Geasland activated his "overhead lights." (See Respondent's Brief (R.B.), pp. 3, 4, 6, 8.) Respondent argued "overhead lights" was a gesture of authority equivalent to a siren. (R.B., 6.) In Respondent's Supplemental Letter Brief, (R.S.L.B.) the term "overhead lights" was used nine times. (R.S.L.B., pp. 2-5.) Respondent also argued "Typically, overhead lights are used to command a moving vehicle to come to a stop on the side of the road." (R.S.L.B., 2.)

Respondent now claims that the evidence gives equal support to two inconsistent inferences, and thus neither is established. (See *People v. Acevedo* (2003) 105 Cal.App.4th 195, 198.) In *Acevedo* the prosecution failed to establish the color of lights a patrol vehicle used in a felony evasion prosecution. The police officer testified that he "activated [his] overhead

emergency lights with the siren." (*Id.* at p. 197.) Thus the jury had no evidence that the officer exhibited a red light as opposed to an amber or blue light.

Acevedo is readily distinguished in this case. Although it is true the exact color of the lights was not mentioned, the trial court below removed all confusion by asking if the lights used would "formalize the traffic stop." (2R.T., 29.) This court can infer that the lights were red by the following facts: Deputy Geasland was working patrol. (2R.T., 10.) Thus he was driving an emergency vehicle as defined in California Vehicle Code section 165. Patrol vehicles have red lights because "[e]very authorized emergency vehicle shall be equipped with at least one steady burning red warning lamp visible from at least 1,000 feet to the front of the vehicle to be used as provided in this code." (See Veh. Code § 25252.) Deputy Geasland used the same lights he would use for a traffic stop. (2R.T., pp. 28-29.) Under Evidence Code section 664 it is presumed that official duty has been regularly performed. This presumption affects the burden of proof and places the burden on Respondent to show that such duty was not regularly performed. (See Evid. Code, §§ 605—606; *Kahn v. East Bay Mun. Util. Dist.* (1974) 41 Cal.App.3d 397, 414.) Presumptions established by law that fall within the criteria of Section 605, are presumptions affecting the burden of proof. (See Evid. Code § 660.) Because Deputy Geasland would use the same lights to formalize any traffic stop on a moving vehicle, and he was working patrol duty, there is a presumption under the law that he regularly performed the stop with a red light. The detention and arrest was without a warrant, the burden of proof lies with the prosecution, and the proof was to be established by the preponderance of the evidence. (See *U.S. v. Matlock* (1974) 415 U.S. 164, 177.) The facts giving rise to the presumption in this

case did not need to be established beyond a reasonable doubt. (See Evid. Code § 607; *People v. Acevedo, supra,* 105 Cal.App.4th at. p. 198.)

Respondent's efforts to retreat from the red light are a concession that a red light signals a detention to any reasonable person, even when they are already parked.

Respondent then claims that the court below must have concluded that the light was not red based upon the ruling that the deputy had a reason to detain once he observed signs of intoxication. Respondent argues a reviewing court must draw all presumptions in favor of the trial court's express and implied factual determinations where supported by substantial evidence. (*People v. McDonald* (2006) 137 Cal.App.4th 521, 529.) However, the trial court did not pinpoint any exact time that Mr. Brown was actually detained, but simply analyzed why a detention was justified. The trial court opined that there was a reasonable suspicion to detain Mr. Brown because of his proximity to a fight, a possible loaded gun, and then the obvious symptoms of alcohol use. (2R.T., pp. 37-38.) The court then stated "I think those symptoms then give rise to a detention in this matter." (2R.T., 38.) The court stated why a detention was justified, but never expressed or implied the exact moment Mr. Brown was detained. The court below never mentioned the color of the lights activated when coming to its conclusion.

After conceding red lights could be considered an official showing of law enforcement authority, Respondent supports the Court of Appeal's holding that Mr. Brown failed to establish that he submitted to the showing of authority. (A.B.M., p. 24.) Respondent appears to put forth an argument that the only way to show submission to authority is to drive away and then stop. Respondent correctly states that Mr. Brown could have driven away

without violating Vehicle Code section 2800 because Deputy Geasland did not activate his siren. Respondent then incorrectly claims that since Mr. Brown did not respond to Deputy Geasland's inquiries in the alley, then he must have been oblivious to the emergency lights. However, there is nothing in the record to state so. There was no testimony that Mr. Brown was surprised by Deputy Geasland's appearance at the driver's window. Once again this is a new argument from Respondent, because in his earlier briefings he stated, "The use of lights here is most reasonably interpreted as an effort to convey to appellant—someone who had already appeared oblivious to the officer's efforts at communication—that a law enforcement officer was present and sought to speak to him." (See R.S.L.B., 2.) Respondent's previous argument is much more in line with common experience and common sense. Emergency lights are made to be noticed.

Mr. Brown continues to rely upon the United States Supreme Court decision in *Brendlin v. California* (2007) 551 U.S. 249. In *Brendlin*, a passenger in a car stopped by the police wanted to challenge the reason for the stop. The prosecution argued he was not detained because, unlike the driver, he had no ability to submit to the deputy's show of authority. The Supreme Court held "a fleeing man is not seized until he is physically overpowered, but one sitting in a chair may submit to authority by not getting up to run away. Here, Brendlin had no effective way to signal submission while the car was still moving on the roadway, but once it came to a stop he could, and apparently did, submit by staying inside." (See *Brendlin v. California* (2007) 551 U.S. 249 at pp. 261-62.)

Respondent has been consistent on one point in his arguments: he declares the reasoning above as "dicta." Not so. The *ratio decidendi* is the principle or rule that constitutes the ground of the decision, and it is this

principle or rule that has the effect of a precedent. It is therefore necessary to read the language of an opinion in the light of its facts and the issues raised to determine: (a) which statements of law were necessary to the decision, and therefore binding precedents; and (b) which were arguments and general observations, unnecessary to the decision, *i.e.*, dicta, with no force as precedents. (See 9 Witkin, Cal. Proc. 5th (2008) Appeal, § 509, p. 572; *Garfield Med. Center v. Belshé* (1998) 68 C.A.4th 798, 806, citing the text; 45 Harv. L. Rev. 1125; 4 Stanf. L. Rev. 509; 20 Am.Jur.2d (2005 ed.), Courts §133 et seq.)

However, it is equally axiomatic that Supreme Court dicta should not be blithely ignored. Indeed, such dicta is said to be "persuasive" (*United Steelworkers of America v. Board of Education* (1984) 162 Cal.App.3d 823, 835.) and to "command[ ] serious respect." (*Santa Monica Hospital Medical Center v. Superior Court* (1988) 203 Cal.App.3d 1026, 1033; see 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 785, p. 756: "A statement which does not possess the force of a square holding may nevertheless be considered highly persuasive, particularly when made by an able court after careful consideration, or in the course of an elaborate review of the authorities, ...") (See *Bunch v. Coachella Valley Water Dist.* (1989) 214 Cal.App.3d 203, 212.)

The above-mentioned reasoning in *Brendlin* was not dicta. The Supreme Court disagreed with three premises put forth by the California Supreme Court to state that the passenger had not been detained. (*Id.* at p. 259.) The first premise was that the police only intended to investigate the car's driver. The Court applied the test as put forth in *U.S. v. Mendenhall* (1980) 446 U.S. 544, 554 of what a reasonable passenger would understand, and rejected any consideration of an officer's subjective intent consistent

with *Whren v. U.S.* (1996) 517 U.S. 806, 813. The second premise countered by the Supreme Court was that Mr. Brendlin, as a passenger, had no ability to submit to the police authority. The Court answered that question with the statement that Mr. Brendlin submitted by staying inside.

Far from being dicta, the reasoning established the rule that constitutes the ground of the decision and operated as a statement of law necessary to the decision. The fact was that Mr. Brendlin, as a passenger, did nothing to demonstrate a submission to the show of police authority. The issue raised was whether he was detained in light of the Supreme Court's ruling as put forth in *California v. Hodari D.* (1991) 499 U.S. 621. The Court ruled that in such circumstances a person can demonstrate a submission to authority by simply remaining put.

Respondent then claims that it would have been reasonable for Mr. Brown to think that Deputy Geasland was responding to a nearby residence, engaged in activities unrelated to Mr. Brown. (A.B.M., 26.) Respondent appears to suggest a new rule of law: that Mr. Brown had to hear oral commands, questions, or be approached before he could be deemed detained. In this case, Mr. Brown had been already been questioned in the alley—there was no confusion as to the intent of Deputy Geasland. Once again, this is contrary to the holding in *Brendlin*: "Brendlin was seized from the moment Simeroth's car came to a halt on the side of the road, and it was error to deny his suppression motion on the ground that seizure occurred only at the formal arrest." (*Brendlin v. California, supra*, 551 U.S. 249, 263.) There is no precedent that requires any more than a red light to demonstrate the showing of authority. As long as the suspect remains at the scene, he is detained the instant the light is activated.

Respondent does not even attempt to answer the question submitted in the opening brief on the merits: What must a stopped person do to demonstrate a submission to the show of authority besides wait? The gauntlet has been thrown; it remains at Respondent's feet.

II.

DEPUTY GEASLAND WAS NOT JUSTIFIED IN DETAINING MR. BROWN.

Respondent never addressed the first issue presented in the opening brief on the merits: Are facts known only to a civilian 911 operator properly imputed to an officer in the field under the collective knowledge doctrine? Instead Respondent misstates Appellant's arguments: "The crux of appellant's argument is that the 911 call should be treated as an unreliable, purely anonymous tip." (A.B.M., pp. 26-27.) "Appellant argues that Deputy Geasland was responding to a purely 'anonymous tip' that contained 'no indications of reliability ...'" (A.B.M., 29.) That is a completely false and misleading statement of what was said in Mr. Brown's opening brief. The complete quote casts an entirely different meaning: "In this case, the 911 call was traceable, but Deputy Geasland *believed* the caller to be anonymous, and no indications of reliability *were provided* by the dispatcher." (See Appellant's Opening Brief on the Merits (A.O.B.M.) p. 13, italics added for emphasis.)

Mr. Brown has repeatedly conceded that the tip was not completely anonymous, only that Deputy Geasland *believed* the tip was anonymous. Not only did Deputy Geasland believe the tip was anonymous, he was misled as to the exact location of the fight and never provided with descriptions of the participants or the presence or description of a vehicle. As such, he was

not given anything to verify there was actually a fight, much less the presence of a gun. As to the reliability of the call, it was never fleshed out in the record. The argument overheard by the 911 operator may have simply been between Mr. Brown and a female friend of the caller, and the mention of a gun may have been a clever ruse to insure the quick elimination of a rival. If the call was truly reliable, where are the four participants, the gun, or the other cars?

Respondent states Deputy Geasland was justified in questioning Mr. Brown to determine whether he knew anything about the reported fight with a loaded firearm. (A.B.M., 27.) Mr. Brown never questioned the right of Deputy Geasland to investigate the call or contact witnesses. Since Mr. Brown was the only potential witness observed by Deputy Geasland, there was no problem with him posing questions, as long as Mr. Brown had the right to refuse to answer. In this case, that is what happened in the alley—Deputy Geasland asked questions and Mr. Brown chose to ignore those questions. Deputy Geasland wanted to force Mr. Brown to give answers and that is why he activated his emergency lights. Mr. Brown objects to the resulting detention because it was unsupported by any articulable suspicion that he was involved in any criminal activity. None of the reasons given by Respondent justify the detention of Mr. Brown even when considered together. Mr. Brown was not identifiable as a participant to the fight. The exigent nature of the call did not indicate that Mr. Brown was involved. The quick timing of Deputy Geasland's arrival at the scene and his observations of Mr. Brown simply gave him an indication that Mr. Brown was a potential witness, nothing more.

Contrary to the contentions of the Court of Appeal's and Respondent, Mr. Brown's refusal to answer Deputy Geasland's questions cannot be used

as a circumstance to justify a detention. If an officer approaches a person in a public place and asks whether he "would mind answering a few questions" and the person declines ("No, I don't want to talk to you."), a person's unwillingness to engage in a consensual encounter does not create reasonable suspicion to detain the person involuntarily for questioning. In *People v. Perrusquia* (2007) 150 Cal.App.4th 228, the Court of Appeal affirmed the trial court's decision to grant the motion to suppress after finding the officers did not have reasonable suspicion to detain the defendant. The defendant had been asked for permission to conduct a pat down search. He said, "No." The officer told the defendant a pat down search was the only way the officer could rule out whether the defendant had any weapons. Again, the defendant declined and started to walk away. At that point, the officers physically apprehended him and found two loaded guns and some methamphetamine. (See also, *In re H.H.* (2009) 174 Cal.App.4th 653.) Respondent states that Mr. Brown's refusal to answer indicted he was "aloof and dazed," and raised the officers suspicions, not of criminal activity, but that he might be injured. No matter how it is characterized, the inference that it gives a reason to detain undermines the basic premise of a consensual encounter that the ability to avoid the encounter makes it consensual.

As Respondent states: "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.) Respondent never states a fact that gave indication that Mr. Brown was involved in the activity. Respondent quotes extensively from *Navarette v. California* (2014) 134 S.Ct. 1683 to state that an anonymous tip can give a reasonable suspicion to detain. But the dispatch in *Navarette* actually gave

the officer a reliable description of the suspect: "Showing southbound Highway 1 at mile marker 88, Silver Ford 150 pickup. Plate of 8--David--94925. Ran the reporting party off the roadway and was last seen approximately five [minutes] ago." (See *Navarette v. California, supra,* 134 S.Ct. at pp. 1686-87.) The CHP officer intended to detain that pickup, and did so. Exactly what undescribed person was Deputy Geasland to detain?

Respondent also states that the detention was justified because the case was comparable to *People v. Dolly* (2007) 40 Cal.4th 458. But unlike the instant case, the officers in Dolly had a description they could rely upon:

> Los Angeles Police Officer Frank Dominguez and his partner, Officer Goldstein, received a radio call about a man with a gun at Jefferson Boulevard and Ninth Avenue. The perpetrator was described as a light-skinned African–American male with a cast on his arm, in a possibly gray Nissan Maxima on the north side of Jefferson, and was said to have threatened the 911 caller with a gun. Two or three minutes later, the officers arrived at the scene and spotted a black Nissan Maxima parked on the north side of Jefferson, just east of Ninth. There were three people in the car. Defendant, who was sitting in the driver's seat, matched the description provided in the radio dispatch. He also had a cast on his left arm.

(See *People v. Dolly, supra,* 40 Cal.4th at p. 462.)

Compare the above to the instant case. "415 Fight, IB., 1169 Georgia, south of Coronado, North of Fern in the alleyway. Four subjects... Somebody may have said something about a loaded gun." Deputy Geasland would have been justified in detaining four suspects found fighting in the alley, just as Officer Dominguez was justified in detaining the light skinned African American man with a cast sitting in a Nissan Maxima parked on the north side of Jefferson. But there

was no fight, no described individuals, no described car, and no gun. There was no justifiable reason to detain Mr. Brown.

III.

A "BRIEF INTRUSION UPON MR. BROWN'S LIBERTY" WAS NOT JUSTIFIED WITHOUT PROBABLE CAUSE.

Respondent claims the detention was permissible under *Michigan v. Summers* (1981) 452 U.S. 692 due to officer safety concerns. In *Summers*, the Court recognized three important law enforcement interests that, taken together, justify the detention of an occupant who is on the premises during the execution of a search warrant: officer safety, facilitating the completion of the search, and preventing flight. (*Summers* 452 U.S., at 702–703.) The Court held that "the execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence," and "[t]he risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation." (*Id.*, at 702–703.)

Respondent also states the "intrusion upon appellant's liberty was minimal and tailored to the important government interests of ensuring public safety and the officer's safety." In *Summers*, the Court recognized the authority to detain occupants incident to the execution of a search warrant not only in light of the law enforcement interests at stake but also because the intrusion on personal liberty was limited. The Court held the detention of a current occupant "represents only an incremental intrusion on personal liberty when the search of a home has been authorized by a valid warrant." (*Id.* at 452 U.S., at 703. Because the detention occurs in the individual's own

home, "it could add only minimally to the public stigma associated with the search itself and would involve neither the inconvenience nor the indignity associated with a compelled visit to the police station." (*Id.*, at p. 702.)

Respondent's reliance on *Summers* is puzzling because there was no warrant based upon probable cause in this case, no narcotic sales allegations, and no danger to Deputy Geasland. Mr. Brown's first encounter with Deputy Geasland was uneventful. Deputy Geasland obviously felt comfortable approaching Mr. Brown because he did not approach with his weapon drawn, did not call for backup, and did not run the license plate.

The "general rule" is "that Fourth Amendment seizures are 'reasonable' only if based on probable cause." (*Dunaway v. New York* (1979) 442 U.S. 200, 213.) *Summers* embodies a categorical judgment that in one narrow circumstance—the presence of occupants during the execution of a search warrant—seizures are reasonable despite the absence of probable cause. *Summers* itself foresaw that without clear limits its exception could swallow the general rule: If a "multifactor balancing test of 'reasonable police conduct under the circumstances'" were extended "to cover all seizures that do not amount to technical arrests," it recognized, the "'protections intended by the Framers could all too easily disappear in the consideration and balancing of the multifarious circumstances presented by different cases.'" 452 U.S., at 705, n. 19 (quoting *Dunaway, supra*, at 213, 99 S.Ct. 2248 (some internal quotation marks omitted)). Respondent is ignoring those limits and is advocating the elimination of the protections afforded by the Fourth Amendment.

IV.

THERE WAS NO REASON TO CHECK ON MR. BROWN'S WELFARE.

Finally, Respondent claims a brief detention was justified merely to check on Mr. Brown's welfare. Not so. Deputy Geasland had no reason to believe Mr. Brown was involved in an altercation other than the fact that he was a potential witness. Contrary to Respondent's argument, Deputy Geasland never described Appellant's demeanor as "aloof and dazed." (A.B.M., p. 34.) Deputy Geasland actually testified: "He drove right past me. Like, I don't know if his window was up or he ignored me. I don't remember." (R.T.,12.) Respondent also argued that Deputy Geasland was responding to a "violent altercation and a loaded gun." (A.B.M., p. 34.) He actually responded to the possibility of a loaded gun. (R.T., 11.) Deputy Geasland drove down the alley and saw no signs of a fight: no wounded, no weapons, no shell casings, no odor of gunpowder, no blood, no screams, no crying, and no one fleeing the area. Deputy Geasland speculated that Appellant had been involved in the fight, and had a hunch that he possessed a gun. (R.T. pp. 11,13,14, 25.) He then conjured up the possibility that Appellant might have been injured, but he gave no articulable facts of why he would think so. (R.T., 14, 25.) Deputy Geasland did not see anything unusual about the driver when he first saw him: no look of fear or anguish, no nervousness, no wincing in pain, no furtive movements, no fleeing, and most importantly, no calls for help. Deputy Geasland saw nothing unusual about the vehicle when he pulled up behind it: it

was not stopped in the middle of the street, it had not rolled up upon the curb, and the driver was not slumped down in his seat.

Respondent relies upon entirely dissimilar and controversial cases in which officers entered homes without a warrant to check on the welfare of unseen residents under the so called "community caretaker functions" of the police. In *People v. Ray* (1999) 21 Cal.4th 464, the police were called to a residence because the front door had been open all day and the inside was "a shambles." Officers were concerned for the welfare of the people inside. (*Id.* at p. 468.) Officers approached the front door, which was open two feet. The officers believed they had encountered a burglary or similar situation. Looking inside, it appeared as if the front room had been ransacked. They believed a burglary attempt might be in progress and were concerned for the welfare of inhabitants. The officers knocked several times and loudly announced their presence. They received no response. They entered to conduct a security check to see if anyone might be injured, disabled, or unable to obtain help. They found no one inside, but in plain view did observe a large quantity of suspected cocaine and money. (*Id.*at p. 468.) In a plurality opinion, three members of this court concluded an emergency exit doctrine exists which is part of a "community caretaking" exception which would allow such entry. (*Id.* at pp. 467-480.) As viewed by Justices Brown, Baxter, and Kennard, the community caretaker exception finds its roots in the expanded functions of modern police forces in assuring public wellbeing as well as apprehension of criminals. By separate opinion, three members of the *Ray* court, Chief Justice George, and Justices Werdegar and Chin, concluded the entry was permissible

under the traditional exigent circumstances doctrine. (*Id.* at pp. 480–482.) In his dissenting opinion, Justice Mosk concluded there was no exigency, and further, rejected the creation of a community caretaker exception. (*Id.* at pp. 482–488.)

Respondent also cites to *People v. Higgins* (1994) 26 Cal.App.4th 247, another case in which a warrantless entry to a home was justified by exigent circumstances. The officer in *Higgins* responded to a report of a domestic disturbance involving "'a man shoving a woman around.'" (*Id.* at p. 249.) When he arrived at the scene, the officer merely "saw a man inside the residence" and "heard a shout from within." (*Ibid.*) Since these facts alone were not necessarily corroborative of the domestic violence report or indicative of ongoing violence inside the home, it was important for the officer in *Higgins* to knock on the door and speak to an occupant of the home before deciding whether a warrantless entry was necessary. He then became reasonably concerned for the safety of the woman who answered the door based on her demeanor and her responses to his questions. (*Id.* at pp. 249, 251-252.)

The instant case has no articulable facts to suggest Appellant had been injured or was in danger. He was alone in a car and the officer did not respond to a call in which a gun was observed or shots had been fired. There was no community caregiver function required and no exigent circumstances. Unlike *Ray* there was no suspiciously absent person and no indications he was injured. It could be presumed that if he had been shot he would have asked for help. Additionally, the deputy's true intent was to investigate a crime; he admitted that he had a hunch that Appellant had a gun. This runs

afoul the holdings in *Ray* because the community caretaker exception is only invoked when the police are not engaged in crime-solving activities. (*People v. Ray*, *supra*, 21 Cal.4th at p. 471.)

Exigency extends to those actions necessary to protect and preserve life even where pursuit of criminals or prevention of crime were not involved. Thus in *People v. Roberts* (1956) 47 Cal.2d 374, the police entered to render emergency aid after being told the occupant was ill and they could hear moans and groans coming from the apartment. Several cases have allowed warrantless entry where a recent crime occurred in the area and bloodstains were present around or leading into the residence. (See *People v. Hill* (1974) 12 Cal.3d 731; *People v. Amaya* (1979) 93 Cal.App.3d 424; *People v. Poulson* (1998) 69 Cal.App.4th Supp. 1.) In this case no shots were fired and there were no blood stains at the scene. There was no exigency. The detention was not legal.

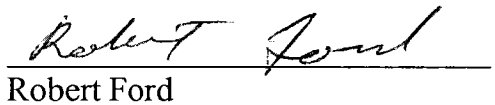
CONCLUSION

A police officer's use of a consensual encounter is a powerful law enforcement tool. It has proved effective because most citizens do not want to be rude to a police officer, and most criminal suspects lack the wherewithal to remain calm and walk away. Deputy Geasland did not want to abandon his otherwise fruitless investigation. When the only potential witness refused to cooperate, he detained him. The detention was not based upon any reasonable suspicion of criminal activity on the part of Mr. Brown and was thus illegal. Supporting a detention in this case would undermine the theoretical premises of police consensual encounters.

Dated: February 24, 2015

Respectfully submitted,

RANDY MIZE, Chief Deputy
Office of the Primary Public Defender

By: 

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CERTIFICATE OF WORD COUNT

I, Robert Ford, hereby certify that based on the software in the word processor program, the word count for this document is **5,510** words.

Dated: February 24, 2015

By: Robert Ford

Robert Ford
Deputy Public Defender

PROOF OF SERVICE

CASE NAME: People v. Shauntrel Brown
Supreme Court No.: S218993
Ct. of App. - 4th DCA/Div. 1 No.: D064641
Trial Ct. No.: SCS264898

I, the undersigned, say: I am a citizen of the United States and a resident of the County of San Diego, State of California. I am over the age of 18 years and not a party to the within action. My office address is 450 "B" St., Ste. 900, San Diego, California 92101.

On the date of execution of the foregoing document, I personally served a true and correct copy of the ***PETITIONER'S REPLY BRIEF ON THE MERITS*** to the following:

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

Executed this 24th day of February 2015, at San Diego, California.

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