

CASE ALERT

ROBERT PHILLIPS
DEPUTY ATTORNEY (RETIRED)

LEGAL UPDATES
PUBLISHING COMPANY
info@legalupdates.com
www.legalupdates.com
(877) 266-4003



CASE BRIEF

Court Rules On Detentions Vs. Consensual Encounters Amid Implicit Bias Concerns

COURT CASE REFERENCE: People v. Jackson (3/15/24) 100 Cal.App.5th 730

CASE LAW

Detaining a subject sitting in his car without a reasonable suspicion to believe he is involved in criminal activity is illegal. Surrounding and flash-lighting that person, cutting off any reasonable route to simply walk away, is a detention.

- Consensual encounters vs. detentions
- Hunch vs. reasonable suspicion
- Implicit biases (See note)

RULES

A Fourth Amendment “seizure” of a person by a police officer occurs if, in view of the surrounding circumstances, a reasonable person would not believe that he or she is free to leave. A detention requires at the very least a reasonable suspicion to believe the person is involved in criminal activity

FACTS

Shortly before midnight on July 12, 2021, two Los Angeles Police Department patrol officers, while driving down 109th Street between Avalon and San Pedro, observed a lone Black male sitting in a parked expensive looking Range Rover or Land Rover. Both officers immediately noticed the occupant, later determined to be the defendant, Albert Jackson, was sitting “kind of awkwardly” — “kind of halfway in, halfway out of the driver’s seat” — and was wearing a “big bulky jacket.” The officers found this to be unusual in that they thought it was warm (later testimony showed it was in the mid to low 60s) and humid out. One of the officers also testified that based upon his training and experience, and his “knowledge of the area, that specific block” (implying, perhaps, that it was a “high crime area”), the time of night, that the defendant was sitting in “a high-end car, like, a really nice Range Rover,” was all suspicious to him. The officers therefore stopped their car next to Jackson’s, and in a position to where it would have been difficult for Jackson to get out of his car — “close enough so (that Jackson) would have to squeeze to get out.” With both officers shining their respective flashlights on an “uncomfortable and kind of nervous” Jackson, one officer contacted him while the other walked around to the passenger side.

Both officers testified that despite their suspicions, Jackson was free to leave had he chosen to do so. However, within 10 seconds of initiating the contact, one of the officers “spied a gun” in Jackson’s pocket. Jackson was arrested and charged in state court with being a felon in possession of a firearm. The defense counsel argued that the gun had been discovered during Jackson’s unlawful detention in what she referred to as a “textbook example of law enforcement hunch and conjecture with underpinnings of racial discrimination.” Jackson’s motion to suppress, however, was denied by both the preliminary examination magistrate and later the trial court. Both courts ruled that Jackson had been “consensually encountered” only, making the discovery of the gun lawful. Pursuant to a plea agreement, Jackson pled no contest to a felon-in-possession charge. Sentenced to 16 months in prison, Jackson appealed.

HELD

The Second District Court of Appeal (Div. 8) reversed. The issue on appeal was whether this contact between the officers and the defendant was a “detention,” or, as argued by the People, no more than a “consensual encounter.” If the former, then the court would have to decide when, in the sequence of events, it became a detention: before or after the discovery of the gun. The distinction is important. Consensual encounters require no justification. In a consensual encounter situation, the police may approach people in public and engage them in a consensual conversation, asking, for instance, if they are willing to answer questions. The general rule, as relevant here, is that the police merely walking up to someone in a parked car is not a detention. Prosecutors may use a defendant’s voluntary answers in such a situation, and an officer’s observations, in a criminal prosecution, the Fourth Amendment not being applicable. (*People v. Tacardon* (2022) 14 Cal.5th 235, 241.) Detentions, on the other hand, require justification. Such a detention may involve an officer’s use of physical force, or even a mere “show of authority,” sufficient to telegraph to a reasonable person that he or she is not free to just walk away. The rule is that a Fourth Amendment “seizure” occurs if, in view of all of the surrounding circumstances (often referred to as the “totality of the circumstances,”) a “reasonable person” in the detainee’s shoes would not believe that he or she is free to leave. (*Tacardon, supra*, and *Brendlin v. California* (2007) 551 U.S. 249, 254-255.) Neither the officer’s, nor the contacted person’s, subjective belief is typically relevant. The officer’s state of mind is relevant only if his or her actions somehow communicate that mental state of mind to the person being contacted. (*Tacardon, supra*, at page 241-242). It is the prosecution’s in-court burden to justify such a detention. On appeal, an appellate court is to independently assess whether a challenged seizure violates the Fourth Amendment according to federal constitutional standards, deferring only to a lower court magistrate’s express and implied findings of fact, at least so long as supported by substantial evidence. With all these rules in mind, the appellate court here reversed the lower courts’ (preliminary magistrate and trial court) conclusions as to whether the firearm was seized during an unlawful detention, finding that it was. As such, the firearm should have been suppressed. The court specifically ruled that a reasonable person in the defendant’s position would not have felt free to leave. In other words, he was being “detained,” and not merely “consensually encountered.” The circumstances mandating this conclusion include the fact that the officers parked so close to Jackson’s car that it would have been difficult for him to open his door and get out. The officers also walked up to him from both sides of his car, with flashlights trained on him as he sat in his car, in effect surrounding him. The People argued that if Jackson had been detained, the detention was lawful. This was based on the officers’ suspicions that Jackson was perhaps sitting in a stolen car, or that he was otherwise engaged in illegal activity. The court, disagreed, ruling that merely “wearing what someone perceives is a big, bulky jacket on what feels to be a hot humid night does

not lead an officer reasonably to conclude ‘that criminal activity may be afoot.’” The court also noted that “it is natural for someone to look surprised, nervous, and uncomfortable when police appear out of the dark, park too close for easy exit, surround your car, and shine flashlights on you.” Further, “sitting in an awkward, uncomfortable position, seemingly ‘halfway in, halfway out’ of the driver’s seat,” is not indicative of being involved in any criminal activity. Lastly, there was nothing in the record to support a suggestion that this occurred in “a high-crime area.” And there was certainly nothing to indicate that merely because defendant was a Black man sitting in an expensive car, that he had stolen it. As concluded by the court: “Collectively, these justifications did not create a reasonable suspicion of criminal activity. The detention was invalid.” The gun, therefore, should have been suppressed.

AUTHOR NOTES

I have to agree with the court in this case: If this was a detention, it was illegal. And looking at how a reasonable person in Jackson’s shoes would have felt under the circumstances, he was in fact detained, without sufficient reasonable suspicion to believe that he was engaged in criminal activity. Flash-lighting, spotlighting (not done here), surrounding, and blocking a convenient exit, have all been held to be factors indicating a detention. So how could the officers have lessened the intrusiveness of the contact and made it a consensual encounter? First, the officers should have parked their patrol vehicle away from Jackson’s car so that they weren’t inhibiting him from getting out of his car if he so wanted: behind it or across the street. Second, they should have walked up on him using flashlights only as necessary for officer safety: only to check the back seat and not trained on Jackson himself, at least until he was actually contacted. Last, and perhaps most importantly, the first words out of the officer’s mouth should have been sometime along the lines of: “Good evening, sir. Do you mind talking with me for a few minutes?” or anything similar that would have communicated to a reasonable person that he had a choice. The most effective way to ensure that any contact will later be held to be consensual as opposed to a detention is to relay to that person in some manner that he doesn’t have to talk to you if he doesn’t want to. (In fairness to the officers, the court here doesn’t tell us here what was actually said.) On another important, increasingly discussed issue: Note that the defense attorney attempted to argue that Jackson’s race influenced the officers’ decision to contact him, something that was not discussed by the court. We’ll never know whether this is true or not, and I’m sure Jackson would have been contacted no matter what his race. But you need to know that the legislature and the courts are becoming more and more sensitive to the issue of what is now referred to as one’s “implicit bias,” meaning that a defendant was treated differently than he would have been if he were Caucasian, even though the officer himself didn’t realize he was doing so. The legislature has enacted a number of protections in its attempt to prevent this, most recently, Penal Code § 745, the California Racial Justice Act of 2020. The appellate courts are also taking up the gauntlet on this issue, examining an officer’s intent in stopping and/or arresting a suspect, whether motivated by “explicit” (intentional) or “implicit” (subconscious) biases. (Finley v. Superior Court (2023) 95 Cal.App.5th 12.) This issue has also been expanded to include a prosecutor’s potential biases (People v. Simmons (2023) 96 Cal.App.5th 323), a trial court’s biases (Young v. Superior Court (2022) 79 Cal.App.5th 138; People v. Garcia (2022) 85 Cal.App.5th 290), and even the defendant’s own attorney’s biases. (People v. Coleman (2024) 98 Cal.App.5th 709.) I’m telling you this solely for the purpose of suggesting that everyone, at all levels of the criminal justice system, think about your actions as they relate to any minority and ask yourself: “Would I have handled this differently had the defendant been Caucasian?” This may take a little soul-searching, but it’s something that’s going to be monitored by the courts more and more, and really, is the right

thing to do.

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