

## People v. Brown

(2015) 61 Cal.4th 968

### Issues

(1) Was the occupant of a parked car detained when a deputy pulled in behind him and activated his emergency lights? (2) If so, did the deputy have grounds to detain him?

### Facts

At about 10:30 P.M., a man phoned San Diego County 911 and reported that four people were fighting in an alley behind his home. He confirmed his address and said he heard one of the men say “the gun was loaded.” He also said that the men lived two houses away from him, and that a car was parked in the alley, and he could hear screaming. The 911 operator could also hear the screaming over the phone and immediately dispatched deputies to the fight, notifying them that one of the men may have a gun.

The first deputy arrived about three minutes later and had started to drive down the alley when he saw a car approaching him. He didn’t see anyone else in the alley so, as the driver passed his patrol car he yelled “Hey. Did you see a fight?” The driver ignored the deputy and kept driving. The deputy turned around and tried to catch up with him. He found the car a few seconds later parked at the side of a street. The driver was still inside, so he stopped behind it, activated his overhead emergency lights, approached the car, and spoke to the driver, Shauntrel Brown. The deputy quickly determined that Brown was under the influence, and arrested him for DUI.

Brown later filed a motion to suppress the deputy’s observations of his physical condition on grounds that (1) the deputy had detained him when he turned on his emergency lights, and (2) that deputy did not have grounds to detain him. The Court of Appeal ruled that Brown had not been detained at the outset and it affirmed his conviction. Brown appealed to the California Supreme Court.

### Discussion

**WAS BROWN DETAINED?** The U.S. Supreme Court has ruled that a person is “detained” if (1) he reasonably believed he was not free “to decline the officers’ requests or otherwise terminate the encounter,”<sup>1</sup> and (2) the person submitted to the officer’s show of authority.<sup>2</sup> It is also settled that a detention results if an officer’s words or actions constituted a command to stop.<sup>3</sup>

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<sup>1</sup> *Florida v. Bostick* (1991) 501 U.S. 429, 436. Also see *Brendlin v. California* (2007) 551 U.S. 249, 256-57; *United States v. Drayton* (2002) 536 U.S. 194, 201 [“If a reasonable person would feel free to terminate the encounter, then he or she has not been seized.”].

<sup>2</sup> See *California v. Hodari D.* (1991) 499 U.S. 621, 626 [the term “seizure” “does not even remotely apply to the prospect of a policeman yelling ‘Stop, in the name of the law!’ at a fleeing form that continues to flee”]; *Brendlin v. California* (2007) 551 U.S. 249, 254 [“but there is no seizure without actual submission; otherwise, there is at most an attempted seizure”].

<sup>3</sup> See *People v. Verin* (1990) 220 Cal.App.3d 551, 556 [“[W]hen an officer ‘commands’ a citizen to stop, this constitutes a detention because the citizen is no longer free to leave.”]; *People v. Bates* (2013) 222 Cal.App.4th 60, 65 [“A reasonable driver would not feel free to ignore a uniformed officer standing next to a patrol car, possibly gesturing with a raised hand, and would feel compelled to stop.”].

The question, then, was whether Brown was automatically detained because the deputy turned on his emergency lights. This is a subject that the courts have dealt with in the past, and they have consistently ruled that an officer's activation of emergency lights constitutes a command to stop to motorists and pedestrians who reasonably believed the lights were directed at them.<sup>4</sup> As the Court of Appeal observed, "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."<sup>5</sup>

For example, if a vehicle was travelling on a street or freeway and an officer pulled behind it and turned on his red lights, the officer's actions would reasonably be interpreted as a command to stop. In contrast, when an officer drives through traffic with his emergency lights on, a reasonable motorist who sees the lights behind him would understand that the lights were directed at all nearby motorists, and that their purpose was simply to clear traffic.<sup>6</sup> Similarly, if an officer stopped behind a disabled or wrecked vehicle, a reasonable person in the driver's position would understand that the purpose of the emergency lights was merely to warn approaching motorists of the hazard.<sup>7</sup>

Based on these principles, the court in *Brown* ruled that, because the deputy stopped directly behind Brown's car and turned on his emergency lights, "a reasonable person in Brown's position would have perceived the [deputy's] actions as a show of authority, directed at him and requiring that he submit by remaining where he was."

**DID BROWN SUBMIT?** As noted, even if a suspect reasonably believed that he was not free to terminate the encounter, a detention will not result if he did not comply with the command.<sup>8</sup> In most cases, a refusal to submit results from an affirmative act by the suspect; e.g., a vehicle pursuit, the suspect resists or runs. But a suspect's submission may also be passive in nature. For example, a pedestrian will be deemed to have passively submitted if he stood still after he was lit up, or if a passenger on a bus remained on his seat as the result of an officer's show of authority.<sup>9</sup> Consequently, the court ruled that "Brown submitted to the deputy's show of authority by staying in his car at the scene."

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<sup>4</sup> See *Berkemer v. McCarty* (1984) 468 U.S. 420, 436 ["Certainly few motorists would feel free either to disobey a directive to pull over or to leave the scene of a traffic stop without being told they might do so."]; *Brower v. County of Inyo* (1989) 489 U.S. 593, 597 ["flashing lights" constituted a "show of authority"]; *People v. Ellis* (1993) 14 Cal.App.4th 1198, 1202, fn.3 [a detention results when "an officer activated the overhead red light of his police car"]; *U.S. v. Kerr* (9th Cir. 1987) 817 F.2d 1384, 1386 ["The vast majority of automobile stops are initiated by police officers using flashing lights or a siren and are clearly fourth amendment seizures."].

<sup>5</sup> *People v. Bailey* (1985) 176 Cal.App.3d 402, 405-406.

<sup>6</sup> See *Brendlin v. California* (2007) 551 U.S. 249, 254; *Lawrence v. U.S.* (D.C. App. 1986) 509 A.2d 614, 616, fn.2 ["A pedestrian who notices a patrol wagon's emergency equipment ordinarily is not likely to know that an officer is signaling for a stop until the officer communicates in a more direct manner to the pedestrian the officer's intention to stop the pedestrian."].

<sup>7</sup> See *People v. Brown* (2015) 61 Cal.4th 968, \_\_ ["a motorist whose car had broken down on the highway might reasonably perceive an officer's use of emergency lights as signaling that the officer has stopped to render aid or to warn oncoming traffic of a hazard"].

<sup>8</sup> See *California v. Hodari D.* (1991) 499 U.S. 621, 626 [the term "seizure" "does not even remotely apply to the prospect of a policeman yelling 'Stop, in the name of the law!' at a fleeing form that continues to flee"]; *Brendlin v. California* (2007) 551 US 249, 254 ["but there is no seizure without actual submission; otherwise, there is at most an attempted seizure"].

<sup>9</sup> See *Florida v. Bostick* (1991) 501 U.S. 429.

**GROUND TO DETAIN?** The next question was whether the deputy had sufficient grounds to detain Brown. Because the detention was based mainly on Brown's presence in an alley where a large fight had just been reported by a 911 caller, the legality of the detention depended on whether the deputy (or, as discussed later, the 911 operator) reasonably believed that the caller was reliable. Based mainly on DUI arrests resulting from 911 calls, this determination is based on a fairly limited number of circumstances, some of which were relevant here. Specifically, it was relevant that the caller phoned 911 instead of a non-emergency number because it is common knowledge that 911 calls are automatically traced and recorded, and therefore people who phone 911 are—at least to some extent—leaving themselves exposed to identification even if they gave a false name or refused to identify themselves.<sup>10</sup> It was also relevant that the caller immediately reported the fight. As the court observed, “the caller’s report was contemporaneous, a factor that has long been treated as especially reliable.” In addition, the caller disclosed his address and the 911 system confirmed that he was calling from that address. Finally, the caller provided the 911 operator with lots of details about the fight, as opposed to a conclusory statement such as “some guys are fighting.” There was one additional circumstance: the 911 operator could hear the fighting over the phone.

In light of these circumstances, the court ruled that the 911 operator had sufficient reason to believe the caller was reliable.

**THE OFFICIAL-CHANNELS RULE:** Finally, Brown argued that, even if the 911 operator had sufficient reason to believe that the caller was reliable, the detention was unlawful because the deputy knew nothing about the caller’s reliability; i.e., he was merely dispatched to the scene of a fight, possibly involving a gun. However, pursuant to the “official channels” rule, an officer may detain or arrest a suspect based solely or in part on information transmitted through official channels (e.g., departmental briefing, BOLO), or from a governmental database (e.g. AWS).<sup>11</sup> For example, an officer may arrest a suspect

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<sup>10</sup> See *Navarette v. California* (2014) \_\_ U.S. \_\_ [134 S.Ct. 1683, 1689] [“A 911 call has some features that allow for identifying and tracing callers, and thus provide some safeguards against making false reports with immunity.”]; *People v. Dolly* (2007) 40 Cal.4th 458, 467 [“[M]erely calling 911 and having a recorded telephone conversation risks the possibility that the police could trace the call or identify the caller by his voice.”]; *U.S. v. Edwards* (9th Cir. 2014) 761 F.3d 977, 985 [the caller “used the 911 emergency system, also lending further credibility to his allegations”].

<sup>11</sup> See *United States v. Hensley* (1985) 469 U.S. 221, 231 [“[E]ffective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another and that officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information.”]; *Illinois v. Andreas* (1983) 463 US 765, 771, fn.5 [“where law enforcement authorities are cooperating in an investigation, as here, the knowledge of one is presumed shared by all”]; *People v. Lara* (1967) 67 Cal.2d 365, 374 [“the officer was “entitled to make an arrest on the basis of this information, as it was received through official channels”]; *People v. Soun* (1995) 34 Cal.App.4th 1499, 1521, 1523-24 [“[A] police officer who receives a request or direction, through police channels, to detain named or described individuals may make a constitutionally valid detention, even without personal knowledge of facts sufficient to justify the detention, so long as the facts known to the police officer or agency that originated the request would be sufficient.”]; *Case v. Kitsap County Sheriff* (9th Cir. 2001) 249 F.3d 921, 928 [“There is a long line of cases from this and other circuits that an ‘NCIC hit,’ although not definitive in terms of conviction, has been routinely accepted in establishing probable cause for a valid arrest.”].

based solely on information from another officer who said he had probable cause even though the arresting officer was unaware of factual basis for it.

Applying this principle, the court ruled that when a 911 dispatcher notifies officers of a crime in progress, it is ordinarily reasonable for the officers believe that the dispatcher reasonably concluded that the caller's information and his apparent reliability were sufficient, at least for a detention. Said the court, "[I]f a 911 call has sufficient indicia of reliability, a dispatcher may alert other officers by radio, who may then rely on the report, even though they cannot vouch for it."<sup>12</sup>

Consequently, the court ruled that Brown was lawfully detained and it affirmed his conviction. POV

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<sup>12</sup> **NOTE:** A defendant may challenge a 911 operator's conclusion that a caller appeared to be reliable by filing a *Harvey-Madden* motion which would require that prosecutors present evidence or testimony which supports the conclusion. See *People v. Harvey* (1958) 156 Cal.App.2d 516; *People v. Madden* (1970) 2 Cal.3d 1017. This requirement, said the court in *Brown*, "can be met by calling the police dispatcher as a witness at the suppression hearing or by introducing a recording of the 911 call." And because Brown had stipulated that a recording of the 911 call could be received in evidence, the prosecution had complied with the *Harvey-Madden* rule.