FIRST DISTRICT APPELLATE PROJECT
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STOP AND FRISK UPDATE
PUBLISHED CASES FROM 2014 THROUGH 2017

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STOP AND FRISK UPDATE:
PUBLISHED CASES FROM 2014 THROUGH 2017

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PEOPLE V. BROWN (2015) 61 CAL. 4TH 968 [CAL. SUP. CT.] THE DEFENDANT WAS DETAINED WHEN THE LAW ENFORCEMENT OFFICER PULLED HIS PATROL CAR BEHIND THE DEFENDANT'S PARKED VEHICLE AND ACTIVATED THE EMERGENCY LIGHTS.[1]

A dispatcher informed Deputy Geasland that they had received a 911 call reporting that four suspects were fighting in an alley behind a residence on Georgia Street, and that a loaded gun was possibly involved. Geasland arrived on the scene within three minutes. As he drove through an alley towards the indicated location, he saw a car driving towards him, away from the reported fight. The defendant was driving that car. Deputy Geasland yelled out to the defendant, asking if he had seen the fight. The defendant did not respond and kept driving, leading Geasland to suspect that he may have been involved in the fight. Geasland drove in the same direction as the defendant's car and spotted the car parked on Georgia Street, a few houses down from the house behind which the fight had occurred. He pulled his patrol car behind the defendant's vehicle and activated the car's overhead emergency lights. The defendant remained in his vehicle and did not attempt to drive or walk away. When the deputy got out of the patrol car and spoke with the defendant, he observed symptoms suggesting that the defendant had been driving while under the influence of alcohol. The defendant admitted that he had been drinking and had been involved in the fight.

The issue was whether the defendant had been detained, by submitting to a show of authority, when Deputy Geasland parked the patrol car behind him and activated the overhead emergency lights – before Geasland had noted the signs of intoxication. Disagreeing with both the trial court and the Court of Appeal, the Supreme Court found that he was. First, the Court focused on the message conveyed by Deputy Geasland's conduct. Geasland arrived on the scene with his patrol car's lights and sirens activated. When the defendant did not respond to the deputy's inquiry about the fight, he drove after the defendant, stopped behind the defendant's legally parked car and activated his

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[1] The Supreme Court went on to find that this detention was supported by reasonable suspicion based on the defendant's suspected involvement in the fight reported in the anonymous 911 call. This part of the Court's analysis will be discussed in the next section: II. Establishing That The Detention Was Unreasonable.

emergency lights. The Court reasoned that Geasland's actions, culminating in his activation of the patrol car's emergency lights, constituted a show of authority that demonstrated to a reasonable person in the defendant's position that he was not free to leave. Second, the Court emphasized that the defendant did not drive away or otherwise attempt to leave the scene when Geasland turned on the emergency lights and thus submitted to the officer's show of authority. (One could reasonably infer that the defendant was aware of the deputy's overhead emergency lights flashing in the dark immediately behind his car.) The Court, however, declined to adopt a bright-line rule that "an officer's use of emergency lights in close proximity to a parked car will always constitute a detention of the occupants." (*Brown, supra*, at 980.) As always, the assessment of whether the person was detained depends on the assessment of the totality of the circumstances**.**

***IN RE J.G.* (2014) 228 CAL. APP. 4TH 402 [FIRST DIST., DIV. 4]: UNDER THE CIRCUMSTANCES, THE MINOR WAS DETAINED WHEN THE OFFICER ASKED HIM TO SIT ON THE CURB. THE COURT CONSIDERED, BUT DID NOT RESOLVE, THE ISSUE OF WHETHER A MINOR'S AGE SHOULD BE CONSIDERED IN ASSESSING WHETHER A REASONABLE PERSON IN HIS/HER POSITION WOULD FEEL FREE TO TERMINATE THE ENCOUNTER.**

Officer Woelkers was driving his patrol car when he observed 15-year-old J.G. walk across a parking lot toward his brother, D.G. The uniformed officer parked his car and "casually" walked toward the brothers. The brothers agreed to Officer Woelkers' request to talk. After a second officer arrived in a patrol vehicle, Woelkers asked both brothers for identification. D.G. handed the officers a Honduran identification card and J.G. verbally provided a name and birth date. Running a records check, Woelkers discovered that neither brother had a California driver's license or identification card. This was not unusual given their ages. In response to the officer's questions, both boys denied having anything illegal on their persons and agreed to be searched. Woelkers pat searched both brothers and found nothing. Two other officers arrived on the scene; four uniformed officers and three patrol cars were then present at the scene. Woelkers asked the brothers "if they would be willing to have a seat on the curb."(*J.G., supra*, 228 Cal. App. 4th at 406.) They said "yes" and sat down. J.G. then agreed to Officer Woelkers' request to search his backpack. The officer found a semi-automatic pistol inside and J.G's was arrested for possession of a firearm.

The Court of Appeal held that J.G. was unlawfully detained, without reasonable suspicion, when he consented to the search of his backpack; thus, J.G.'s consent was involuntary. The Court held that Officer Woelker's interaction with J.G. began as a

consensual encounter However, the encounter turned into a detention "as Officer Woelker's suspicions persisted without apparent reason, as the encounter became increasingly intrusive, as the minutes passed, and as the police presence and show of force grew."(*J.G., supra*, at 411.) Although the officer asked, rather than commanded, J.G. to sit on the curb, phrasing a statement as a request does not necessarily prevent a detention. Under the totality of circumstances, no reasonable person in J.G.'s position would have felt free to refuse this request. By the time he asked the brothers to sit on the curb, four officers and three patrol cars were present, and the officer had conveyed his suspicion that they were engaged in criminal activity.

The most interesting part of the Court's opinion is the acknowledgment that the minor's age could be a circumstance to consider in determining whether a reasonable person would have felt free to end the encounter or refuse the officer's requests. In *J.D.B. v. North Carolina* (2011) 564 U.S. 261, the U.S. Supreme Court recognized that a child's age could affect how a reasonable person in the suspect's position would perceive his freedom to leave; a child might feel pressured to submit when a reasonable adult would feel free to go. That is why the high court, in *J.D.B*., held that a child's age, if apparent to the officer, would be relevant to determining if he had been taken into custody for *Miranda* purposes. This holding is applicable to the detention versus consensual encounter analysis as that test also focuses on how a reasonable person perceives his freedom to leave or terminate an interaction with the police. Nevertheless, while recognizing "the strength of the argument that *J.D.B.*'s holding should be extended to Fourth Amendment custody determinations", Division Four declined to resolve the issues as any reasonable person in J.G.'s position, child or adult, would not have felt free to go regardless of age. (*J.G., supra*, at 411.)

PEOPLE V. LINN (2015) 241 CAL. APP. 4TH 46 [FIRST DIST., DIV. 2]: UNDER THE TOTALITY OF THE CIRCUMSTANCES, INCLUDING THE OFFICER'S RETENTION OF THE DEFENDANT'S DRIVER'S LICENSE WHILE HE RAN A WARRANT CHECK, THE DEFENDANT WAS UNCONSTITUTIONALLY DETAINED BEFORE THE OFFICER ACQUIRED REASONABLE SUSPICION.

Officer Helfrich observed the sole passenger in the defendant's car flick cigarette ashes out of the window. When the defendant parked the car, the officer stopped and alighted from his police motorcycle while the defendant and her passenger were exiting from the parked car. He asked about the passenger's conduct, implying that flicking ashes out the window of a moving car was illegal. The defendant was smoking and drinking a can of soda; the officer commanded her to extinguish the cigarette and put the can down. The officer asked for the defendant's license and retained it while he ran a warrant check.

After this, he smelled the odor of alcohol emanating from her person, supporting reasonable suspicion that she had been driving under the influence.

The Court of Appeal held that under the totality of circumstances in this case, Officer Helrfich asserted his authority so that a reasonable person in the defendant's position would not have felt free to terminate the encounter – before Helfrich smelled alcohol. The Court emphasized the combination of the following factors: 1) As the defendant emerged from her car, Officer Helfrich, in full uniform, parked his marked police motorcycle within three feet of her. 2) The officer talked to her about her passenger's illegal activity (flicking ashes out of the window) and asked for her driver's license, reasonably conveying to the defendant that she was suspected of violating the law. 3) The officer then retained her driver's license while running an unexplained warrant check. 4) The officer commanded the defendant to put out her cigarette and put down her soda can, thereby indicating that she was not free to do as she pleased.[2] Only then did the officer smell the alcohol emanating from the defendant and acquire reasonable suspicion. At this point, she was already illegally detained.

The Court of Appeal declined to adopt a bright line rule that an officer always initiates a detention when he retains a driver's license while running a warrant check. Instead, the Court held that this may be one factor, in combination with others, supporting a finding that the person was detained.[3]

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[2] **Be sure to read footnote 10, in which Division Two cites recent empirical studies suggesting that a significant number of people do not feel free to leave when approached by the police, and even less so when the police assert any measure of authority. (*Linn, supra*, at 68, n.10.)**

[3] The trial court had granted the defendant's suppression motion, relying on *People v. Castaneda* (1995) 35 Cal. App. 4th 1222,. The court ruled that irrespective of other factors, an officer detains a person when he takes his or her driver's license and retains it while running a warrant check. The prosecution appealed this decision to the Appellate Division of the Napa County Superior Court, which reversed the trial court, relying on *People v. Leath* (2013) 217 Cal. App. 4th 344. In *Leath*, the appellate court had reviewed prior cases that had disagreed with *Castandeda*, finding that the officer's retention of a voluntarily relinquished driver's license to conduct a records check did not convert a consensual encounter to a detention. The appellate division certified the case for transfer to the Court of Appeal to resolve the division of authority on this issue.

***PEOPLE V. STEELE* (2016) 246 CAL. APP. 4TH 1110 [THIRD DIST.]: THE DEFENDANT WAS DETAINED WHEN DEPUTIES FOLLOWED TWO VEHICLES INTO A DRIVEWAY, STOPPED BEHIND THE SECOND VEHICLE, DRIVEN BY THE DEFENDANT, AND ACTIVATED THE PATROL CAR'S EMERGENCY LIGHTS.[4]**

Deputies Fernandez and Bliss were driving in a marked patrol car, just after 10:00 p.m., when they observed two vehicles apparently traveling together. The second, or trailing, vehicle was driven by the defendant. The deputies followed the two vehicles onto a rural dead-end road with no street lights and observed them enter a driveway. A records check revealed that the lead vehicle had expired registration and that its registered owner had a felony arrest warrant. The deputies were not aware of any Vehicle Code or law violations associated with the second vehicle or its registered owner. The deputies decided to conduct an enforcement stop on the lead vehicle. As the two vehicles stopped at the end of the driveway, Deputy Bliss activated the patrol car's emergency lights and drove into the driveway, stopping the patrol car behind the second vehicle. Both deputies initially approached the second vehicle, ostensibly to inform the driver (the defendant) that they were stopping the lead vehicle. As Deputy Fernandez approached the passenger side of the defendant's vehicle, he smelled the odor of marijuana emanating from the car. Using his flashlight, Fernandez saw suspected marijuana in plain view on the backseat. A search of the car turned up marijuana and methamphetamine. The defendant was arrested.

The issue was whether the defendant was detained when the patrol car followed the two vehicles into the driveway, and stopped behind his car with the emergency lights on. Relying on the California Supreme Court's recent decision in *People v. Brown* (2015) 61 Cal. 4th 968, the Third District concluded that a reasonable person, under those circumstances, would not have felt free to leave, and that the defendant submitted to the show of authority by remaining in his vehicle. He was detained before the deputy approached his vehicle and smelled marijuana.

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[4] The Court concluded that this detention was justified not by reasonable suspicion of criminality, but by concerns for officer safety. This part of the Court's analysis will be discussed in the next section: II. ESTABLISHING THAT THE DETENTION WAS UNREASONABLE.

***PEOPLE V. PARROTT* (2017) 10 CAL. APP. 5TH 485 [FIRST DIST., DIV. 4]: THE DEFENDANT WAS NOT DETAINED WHEN THE OFFICER, AFTER OFFERING THE DEFENDANT ASSISTANCE WITH HIS DISABLED VEHICLE, ASKED HIM TO STEP OUT OF THE ROADWAY AND ONTO THE SIDEWALK AND TO KEEP HIS HANDS OUT OF HIS FRONT SWEATSHIRT POCKET**.

Around 8:30 p.m., two police officers drove toward an intersection in Eureka and observed a small purple hatchback, without illuminated rear lights, rolling backwards toward the intersection. Not knowing if there was driver in the car, the officers positioned their patrol vehicle behind the hatchback to keep it from rolling further down the street. Seconds later, the hatchback came to a stop. The defendant exited from the driver's side of the car and pushed it to a nearby curb. Officer Harkness exited the patrol vehicle and asked if he could assist the defendant with the disabled vehicle. The defendant said that he did not really need any help. He was wearing a hooded sweatshirt with a visibly heavy item bulging from the front pocket. Harkness noticed that the defendant seemed nervous and kept touching the bulging item in the pocket. Harkness then asked the defendant to step out of the roadway and onto the sidewalk. Once the defendant was on the sidewalk, Harkness asked him for his name and birth date. The defendant provided this information, nervously adding that he was not on probation or parole. Officer Harkness asked the defendant to refrain from reaching into the front pocket of his sweatshirt, but he agreed to the defendant's request to smoke a cigarette. Dispatch reported to Harkness that appellant's license was suspended. Harkness then took hold of the defendant's arm and twice told him to put his hands behind his back. After the defendant refused to cooperate, he was subdued, handcuffed and pat searched. The officer found a loaded handgun in the defendant's sweatshirt pocket. The defendant's motion to suppress the gun was denied.

The Court of Appeal rejected the defendant's claim that the consensual encounter became a detention when Officer Harkness asked him to step onto the sidewalk and keep his hands out of his pocket. Division Four distinguished the facts of this case from those of *In re J.G.* (2014) 228 Cal. 4th 402, in which it had previously found that a request that two defendants sit on the curb, in combination with other circumstances, had initiated a detention. The Court emphasized three points: 1) "[D]irecting an individual to sit on the curb is not similar to asking someone to step onto the sidewalk to avoid a potential safety risk of having a conversation on a road." (*Parrott, supra*, at 494.) 2) In *J.G.*, by the time that the officers asked the two juveniles to sit on the curb, they had been asked for physical identification and if they had anything illegal on their persons and they had been physically searched, conveying that they were the focus of police suspicion. In the present case, Harkness initiated the consensual encounter by offering to help the defendant with his disabled car. The officer was plainly not investigating criminal

conduct. He did not ask for verbal identification until after the defendant was on the sidewalk. "[A]sking an individual to keep his hands out of his pockets is not akin to conveying to an individual that they are suspected of being involved in unlawful activity." (*Parrott, supra*, at 494.) Rather, the request conveyed the officer's concern for personal safety during the encounter. The Court held that the defendant was not detained until the officer used physical force in order to subdue, handcuff, and pat-search the defendant, after they learned that his license was suspended.

II. Establishing That The Detention Was Unreasonable

A. Detentions Based on Anonymous Tips

NAVARETTE V. CALIFORNIA (2014) 134 S. CT. 1683: AN ANONYMOUS 911 CALL REPORTING THAT A DRIVER HAD RUN THE CALLER OFF THE ROAD, WHICH WAS PRESUMABLY BASED ON THE TIPSTER'S PERSONAL KNOWLEDGE AND SUPPORTED AN INFERENCE OF DRUNK DRIVING, WAS SUFFICIENTLY RELIABLE TO PROVIDE REASONABLE SUSPICION FOR A STOP.[5]

The Humboldt County California Highway Patrol (CHP) office received and recorded a 911 call. The tipster reported that a 1988 Silver Ford pickup with a specified license plate number ran the reporting party off the roadway at a particular highway mile marker, and that the vehicle was last seen approximately five minutes before. The Humboldt County CHP dispatcher relayed this information to the dispatcher in Mendocino County, who broadcast this information to CHP officers at about 3:45 p.m. A CHP officer heading toward the reported vehicle responded. At 4:00 p.m., this officer passed the described truck about 19 miles south of the original reported location; this was about 18 minutes after the 911 call was placed. The officer made a u-turn and pulled the truck over five minutes later. A second officer, who had heard the broadcast, arrived on the scene. As the two officers approached the truck, they smelled marijuana. They searched the truck and found 30 pounds of marijuana. They arrested the driver, Lorenzo Navarette, and the passenger, Jose Navarette (the two defendants).

[5] This was a 5-4 decision. The majority opinion was written by Justice Thomas, joined by Chief Justice Roberts and Justices Kennedy, Breyer and Alito. The dissenting opinion was written by Justice Scalia, joined by Justices Ginsburg, Sotomayor and Kagan.

Justice Thomas, writing for the majority, held that the report that the truck ran the caller off the roadway had sufficient indicia of reliability to credit the tip, which provided reasonable suspicion for a stop. Several factors demonstrated that the tip's reliability: 1) The caller claimed eyewitness knowledge of the alleged dangerous driving. 2) Based on the distance the truck had traveled when the officer observed it, the court could infer that the call was made right after the incident happened so that the tipster reported the event while still under the stress and excitement that it caused. 3) The caller used the 911 emergency system which now provides safeguards against making false reports; calls are recorded and callers can be identified.

The Court also found that the behavior the tipster reported (running her car off the roadway) supported a reasonable suspicion of drink driving. The fact that this brief recklessness could have had an innocent cause (e.g. a driver responding to an unruly child) did not defeat reasonable suspicion. Nor did it matter that the responding officer did not see any reckless driving conduct, indicative of intoxication, in the five minutes he observed the truck before pulling it over. The appearance of a marked police car would inspire more careful driving for a time.

In a scathing dissent, Justice Scalia characterized the majority opinion as serving up "a freedom-destroying cocktail consisting of two parts patent falsity": 1) that anonymous 911 reports of traffic violations are reliable so long as they correctly identify a car and its location; and 2) that a single instance of reckless driving necessarily supports a reasonable suspicion of drunkenness. (*Navarette, supra*, 134 S.Ct. at 1697.) There was no reason to credit the caller's report that the truck had run her off the road and many reasons to doubt it, starting with the fact that the tip was anonymous. Moreover, the tip did not have sufficient indicia of reliability. The tipster did not provide predictive details of the truck driver's criminal conduct which could be corroborated. The fact that tipster was correct about the truck's location at a particular time merely indicated that she saw the truck; it did not verify her claim that the driver ran her off the road.

Justice Scalia also contended that the act of running the caller off the road, even if true, did not support a reasonable suspicion of drunk driving. The truck might have swerved to avoid an animal or a pothole, or the driver might have been momentarily distracted. Moreover, the stop required reasonable suspicion of on-going driving while intoxicated, which was lacking in this case. Scalia emphasized that after spotting the described truck, the responding officer followed the vehicle for five minutes. During that time, Naverette's driving was irreproachable; he did not violate any traffic laws or make any maneuvers indicative of drunk driving. "Drunken driving is a serious matter, but so is the loss of our freedom to come and go as we please without police interference." (*Ibid*.)

UNITED STATES V. EDWARDS (9TH CIR. 2014) 761 F.3D 977: AN ANONYMOUS 911 CALL REPORTING THAT A YOUNG BLACK MAN WAS SHOOTING AT VEHICLES PROVIDED REASONABLE SUSPICION TO DETAIN THE DEFENDANT WHO MATCHED THE DESCRIPTION OF THE SHOOTER PROVIDED BY THE CALLER.

At 7:40 p.m., the Inglewood Police Department received a 911 call from an unidentified male reporting that a young black male, approximately 19-20 years old, was standing on a designated corner shooting at passing vehicles, including the caller's car, with a black handgun. The tipster further described the shooter as 5'7" to 5'9" tall, wearing a black shirt and gray khaki pants. After the shooting, the suspect entered Penny Pincher's Liquor store. Two officers received this information (with the description of the shooter except for his estimated age) and arrived at the designated location by 7:45 p.m. (five minutes after the call). They observed the defendant walking about 75 feet from the liquor store, and believed he matched the caller's description; the defendant was a black male, 5'11" tall, age 26, wearing a black shirt and gray pants. There was only one other person in the area – a male Hispanic wearing a jacket and blue jeans. Two other officers arrived on the scene and the four officers drew their guns as they approached the defendant and the Hispanic man and ordered them to the ground. One officer handcuffed the defendant, pat searched him, felt a hard object, and retrieved a silver handgun. When the dispatcher called back the original 911 tipster, he did not want to identify himself or be involved.

The Ninth Circuit relied on Supreme Court's recent decision in *Navarette v. California*, to conclude that the anonymous 911 caller's eyewitness account of "an ongoing and dangerous situation," combined with his detailed description of the suspect, "exhibited sufficient indicia of reliability to provide the officers with reasonable suspicion." (*United States v. Edwards, supra*, at 984.) First, the anonymous caller reported an emergency situation,shooting at passing cars, which was even more dangerous than the suspected drunk driving in *Navarette*. Second, the caller's detailed description of the shooting as it transpired indicated that he had eyewitness knowledge and was responding to a startling event. Third, the caller used the 911 system which allows for identifying and tracing callers, a safeguard against making false reports.[6]

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[6] The Ninth Circuit also relied on *United States v. Terry-Crespo* (9th Cir. 2004) 356 F.3d 1170. In *Terry-Crespo*, a man called 911, identified himself and his location, and descrbed a man who had threatened him with a gun. The officer stopped the defendant and found a gun. The 911 call, which was not anonymous, relayed first-hand information from the victim, providing reasonable suspicion for the stop.

PEOPLE V. BROWN (2015) 61 CAL. 4TH 968 [CAL. SUP. CT.]: THE DEFENDANT'S PRESENCE, THREE MINUTES LATER, NEAR THE SCENE OF A FIGHT REPORTED BY A 911 CALLER PROVIDED REASONABLE SUSPICION FOR HIS BRIEF DETENTION.[7]

An individual called the San Diego Sheriff's Department's 911 line and, after confirming his address, reported that more than four people were fighting in an alley behind his home on Georgia Street. He reported that the participants lived two houses down from him on the same block. The caller could hear screaming and one person state that the gun was loaded. The caller said there was a car in the alley. A dispatcher relayed this information to Deputy Geasland who arrived on the scene within three minutes. As he drove through the alley towards the indicated location, Gesland saw a car driving towards him, away from the reported fight. The defendant was driving this car. Deputy Geasland yelled out to the defendant, asking if he had seen the fight. The defendant did not respond and kept on driving, leading Geasland to suspect that he may have been involved in the fight. Geasland drove in the same direction as the defendant's car and spotted the car parked on Georgia Street, a few houses down from the house behind which the fight had occurred. He pulled his patrol car behind the defendant's vehicle and activated the car's overhead emergency lights. The defendant remained in his vehicle. When the deputy got out of the patrol car and spoke with the defendant, he observed symptoms suggesting that the defendant had been driving while under the influence of alcohol. The defendant admitted that he had been drinking and had been involved in the fight.

Relying on *Navarette v. California*, the Supreme Court found that the information conveyed by the 911 caller, reporting a fight in progress involving several people and possibly a gun, was sufficiently reliable to support a detention. First, the caller's report was evidently based on his personal knowledge and witnessing of the fight. Second, he was reporting the fight contemporaneously, as it was occurring, because the caller said he heard screaming and the dispatcher could hear it as well. Third, the tipster used the 911 system, which has features allowing for identifying and tracing calls. Also, he confirmed his address to the dispatcher. It did not matter that the report of the fight was received by the dispatcher and conveyed to Deputy Geasland in the field. Although the dispatcher did not testify, the parties stipulated to the admission of the 911 recording into evidence.

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[7] The Supreme Court initially found that the defendant was detained when a law enforcement officer pulled his patrol car behind the defendant's parked vehicle and activiated the emergency lights. This part of the Court's analysis is discussed in the previous section: I. ESTABLISHING THAT THE INDIVIDUAL WAS DETAINED.

Furthermore, the Court found that Deputy Geasland could reasonably suspect that the defendant had been involved in the fight, although this was a close question based on the lack of suspect descriptions. The reported crime was serious. The deputy arrived within three minutes, while the caller was still on the line, and encountered the defendant diving away from the location of the fight. There was no other vehicle or pedestrian traffic. Finally, the defendant ignored the deputyand continued driving away from the scene. "[T]he fact that [the defendant] drove away without responding left Geasland with no alternative short of a detention to identify him and determine if he had been involved in the fight." (*Brown*, *supra*, 61 Cal. 4th at 985.)

B. Detentions Based on Mistakes of Law

HEIEN V. NORTH CAROLINA (2014) 135 S.CT. 530: REASONABLE SUSPICION, AS REQUIRED FOR A TRAFFIC STOP OR AN INVESTIGATORY STOP, CAN REST ON A REASONABLE MISTAKE OF LAW.[8]

While observing traffic on the interstate, Sergeant Darisse watched a Ford Escort pass by. Because the driver looked "very stiff and nervous,", Darisse followed the Ford. (*Heien, supra*, 135 S.Ct. At 534.) When the driver of the Ford braked, only one of two brake lights illuminated. Believing that the faulty brake light violated North Carolina law, Darisse initiated a traffic stop. Vasquez was driving, and Heien (the owner of the car) lay across the rear seat. During the course of the stop, Sergeant Darisse became suspicious because Vasquez seemed nervous and Heien remained lying down. The two men gave inconsistent answers about their destination. Darisse asked if he could search the Ford, and both men consented. During the vehicle search, Darisse found a bag of cocaine. It was later determined that North Carolina law requires only one working brake light, so Heien's car was not in violation.

Writing for the majority, Chief Justice Roberts re-affirmed that "the ultimate touchstone of the Fourth Amendment is reasonableness.....To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials." Searches and seizures based on reasonable mistakes of fact can be justified. "But reasonable men make mistakes of law, too, and such mistakes are no less

[8] This is an 8-1 opinion. The majority opinion is by Chief Justice Roberts, joined by Justices Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito and Kagan. The concurring opinion is by Justice Kagan, joined by Justice Ginsburg. The dissenting opinion is by Justice Sotomayor.

compatible with the concept of reasonable suspicion." (*Heien, supra*, at 536.) To support a detention, the officer's mistaken understanding of the law must be objectively reasonable, and it was in this case. Although the specific provision of the North Carolina law requires only one working brake light, other sections state that all originally equipped rear lamps or the equivalent must be in good working order, suggesting that if a vehicle comes with two brake lights, both must be functional.

In her concurring opinion, Justice Kagan emphasized the limits of the Court's holding; the Court required that the mistake of law must be objectively reasonable. The officer's subjective understanding of the law is irrelevant. Thus, the government cannot defend an officer's mistaken legal interpretation on the ground that the officer was unaware of or untrained in the law. The holding applies where, as in this case, the officer was interpreting a genuinely ambiguous statute.

In her dissent, Justice Sotomayor asserted that the majority's holding is unsupported by precedent or policy. She stated: "I would hold that determining whether a search or seizure is reasonable requires evaluating an officer's understanding of the facts against the actual state of the law.....not even an officer's reasonable misunderstanding about the law, but the law." (*Heien, supra*, at 1542.) In assessing whether there is reasonable suspicion for a detention, the emphasis has always been on the officer's interpretation of the totality of the facts and the inferences drawn from those facts, measured against a fixed legal standard. The notion that the law is definite and knowable sits at the foundation of our legal system. Departing from this tradition means further eroding the Fourth Amendment's protection.

PEOPLE V. CAMPUZANO **(2015) 237 CAL. APP. 4TH SUPP. 14 [APP. DIV. SUPERIOR COURT, SAN DIEGO COUNTY]: APPLYING *HEIEN V. NORTH CAROLINA*, THE OFFICERS STOP OF THE DEFENDANT WAS BASED ON A REASONABLE MISTAKE OF LAW - AN IMPROPER INTERPRETATION OF A MUNICIPAL ORDINANCE**.

Two San Diego police officers observed the defendant straddling his bicycle and operating it at a very slow, walking speed alongside a female companion who was walking. The couple was in a commercial area, on the sidewalk in front of the former Lee's Auto Repair lot, which the officers knew was no longer operating as a commercial business establishment. This was the corner lot next to the intersection. The officers detained the defendant because they believed he had violated a section of the San Diego Municipal Code which states that "[n]o person shall operate a bicycle upon any sidewalk fronting any commercial business establishment unless official signs are posted authorizing such use." (*Campuzano, supra*, 237 Cal. App. 4th Supp., at 16.) Based on the

defendant's agitation, his responses to questions, his rapid speech, and other objective signs, the officers suspected that he was under the influence of a controlled substance. The defendant's performance on drug evaluation field tests confirmed this suspicion. The officers arrested the defendant for being under the influence of a controlled substance.

The point at issue in the trial court regarding the defendant's motion to suppress evidence was whether the officer's detention of the defendant was based on a correct interpretation of the above-quoted language in the municipal ordinance. The prosecution proposed a broad interpretation:that if there are any commercial establishments on a block, the sidewalk of the entire block is covered by the ordinance so that an individual may not operate a bicycle on the entire block. The defense proposed a narrow interpretation and strict construction of the language: that the ordinance only prohibits the operation of a bicycle upon the sidewalk in front of an existing commercial business establishment. The trial court adopted the prosecution's interpretation, found the detention was reasonable, and denied the suppression motion.

During its initial consideration of the case on appeal, the Appellate Division of the Superior Court disagreed and reversed the trial court, finding that the detention was based on an incorrect interpretation of the ordinance and that a mistake of law could not support reasonable suspicion. Subsequently, after the U.S. Supreme Court decided *Heien v. North Carolina* (2014) 135 S.Ct. 530 [see discussion, *supra*.], the Court of Appeal remanded the matter back to the Appellate Division for reconsideration in light of *Heien*.

The Appellate Division found once again that the defendant's detention was based on a mistake of law. Because the officers observed the defendant operating his bicycle only in front of Lee's Auto Repair lot, which was no longer in operation and thus not an existing commercial business establishment, the stop was not justified. If the City Council, who had drafted the section of the ordinance, had intended to prohibit operating a bike on the entire block, it would have said so. However, the Appellate Division also found that the officers' mistake of law was objectively reasonable under the facts of this case. The section of the ordinance in question had not previously been interpreted by any court, so the officers did not have any guidance; it was objectively reasonable for the officers to read the ordinance broadly and detain the defendant. Thus, the Appellate Division affirmed the trial court's denial of the motion to suppress evidence.

C. Detentions Based on Concerns for Officer Safety, Rather Than Reasonable Suspicion

PEOPLE V. STEELE (2016) 246 CAL. APP. 4TH 1110 [THIRD DIST.]: THE DETENTION OF THE DEFENDANT, A VEHICLE DRIVER, WAS NOT SUPPORTED BY REASONABLE SUSPICION, BUT JUSTIFIED TO PROTECT THE SAFETY OF THE DEPUTIES AS THEY CONTACTED THE DRIVER OF THE VEHICLE PARKED IN FRONT OF THE DEFENDANT'S CAR TO EXECUTE AN ARREST WARRANT.[9]

Deputies Fernandez and Bliss were driving in a marked patrol car, just after 10:00 p.m., when they observed two vehicles apparently traveling together. The second, or trailing, vehicle was driven by the defendant. The deputies followed the two vehicles onto a rural dead-end road with no street lights and observed them enter a driveway. A records check revealed that the lead vehicle had expired registration and that its registered owner had a felony arrest warrant. The deputies were not aware of any Vehicle Code or law violations associated with the second vehicle or its registered owner. The deputies decided to conduct an enforcement stop on the lead vehicle. As the two vehicles stopped at the end of the driveway, Deputy Bliss activated the patrol car's emergency lights and drove into the driveway, stopping the patrol car behind the second vehicle. Both deputies initially approached the second vehicle, ostensibly to inform the driver (the defendant) that they were stopping the lead vehicle. As Deputy Fernandez approached the passenger side of the defendant's vehicle, he smelled the odor of marijuana emanating from the car. Using his flashlight, Fernandez saw suspected marijuana in plain view on the backseat. A search of the car turned up marijuana and methamphetamine. The defendant was arrested.

The prosecution did not claim, and the Court of Appeal did not find, that the deputies' detention of appellant (the driver of the second vehicle) was justified by a reasonable suspicion that the defendant or any occupant of his vehicle was engaged in criminality. The Court relied on the following precedents to hold that the brief detention of the defendant-driver was justified by the government's public safety interest in protecting the deputies as they detained the driver to investigate the registration violation and execute the felony arrest warrant: 1) *People v. Glaser* (1995) 11 Cal. App. 4th 354 [the California Supreme Court upheld the detention of the defendant to ensure officer

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[9] The Court concluded that the defendant was detained when deputies followed two vehicles into a driveway, stopped behind the second vehicle, driven by the defendant, and activated the patrol car's emergency lights. This part of the Court's analysis was discussed in the previous section: I. Establishing That the Individual Was Detained.

safety and to determine Defendant Glaser's connection to the subject of a search warrant, as they prepared to execute the warrant at night for illegal drugs inside a residence.] 2) *Maryland v. Wilson* (1997) 519 U.S. 408 [the U.S.Supreme Court upheld an officer's right to detain vehicle passengers during a traffic stop and order them out of the vehicle for officer safety, without individualized reasonable suspicion.] 3) *Michigan v. Summers* (1981) 452 U.S. 692 [the Supreme Court found that while executing a search warrant at a residence, the officers lawfully detained Defendant Summers who was seen leaving the premises before the officers arrived in order to control the scene.] 4) *People v. Taylor* (Colo. 2002) 41 P.3d 681 [the Colorado Supreme Court concluded that an officer was justified in stopping the defendant-driver's car and detaining him in order to arrest the passenger on outstanding warrants; they had no reasonable suspicion that the driver had committed a traffic violation or was engaged in criminal wrongdoing.]

The Third District held that, as in these precedential cases, the deputies had the right to detain the defendant and contact him in order to detain the person in the lead vehicle and serve a warrant. Their only other choice would have been to walk past the defendant's vehicle without knowing whether the defendant or other occupants might pose a danger to the deputies. Justified concerns for officer safety, not reasonable suspicion, supported the brief detention. Within seconds of contacting the defendant, the deputy smelled marijuana allowing a continued detention for investigative purposes.