



# El Segundo Police Department

## Training Section

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## TRAINING BULLETIN

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### Detentions and Consent:

#### When Do Legal Searches Turn Illegal, and Potential Evidence Suppressed?

##### CASE LAW

- Consensual encounters
- Detentions
- Show of authority

##### RULES

A “show of authority” by law enforcement officers may convert an intended consensual encounter into a detention. If such a detention is not accompanied by evidence that the detainee is engaged in criminal conduct, then the detention is illegal, requiring the suppression of any resulting evidence. The discovery during an unlawful detention that a detainee is on parole makes such a discovery, and the results of a parole search, subject to suppression.

##### FACTS

Defendant Jeremiah Paul was observed by two Los Angeles Police Department officers sitting in his Toyota Prius around 9 p.m. on March 7, 2020, in a residential area. The officers first noticed Paul because he was sitting there with his vehicle’s lights on. As the officers drove up next to Paul’s car, one of the officers “illuminated the Prius with his flashlight.” In response, Paul sunk lower in his seat as if “conceal[ing] himself from [the officers’] view,” an action Paul later denied, and the significance of, the court never discussed. One of the officers patrolled this area regularly and knew that a parolee lived across the street from where the Prius was parked. The driving officer then backed up the patrol car and stopped in the middle of the street with his headlights pointing straight down the road, putting the patrol car a vehicle length behind Paul’s car, thus allowing room for him to drive away should he choose to do so.

That officer then got out of the patrol vehicle and walked to the driver’s side of the Prius while illuminating that side of the car with his flashlight. The second officer did the same on the passenger’s side. The driver’s side window was rolled up, but the door was partially open. The officer, who was standing two to three feet from the door, opened it further and spoke to

Paul, asking him innocuous questions such as, “*How ya doin’, man?*” During a short back-and-forth between the two establishing that they were both doing “*all right*” and “*good*,” the officer asked Paul if he lived at that location, to which defendant said that he did. A few more seconds into this unenlightening, yet low-key, conversation, it culminated with the officer asking: “*Any probation or parole?*” Paul responded that he was on parole. The officers therefore conducted a parole search of the car, recovering an illegal firearm. Paul was arrested and charged in state court with possessing a firearm with a prior violent conviction (Pen. Code § 29900(a)(1)). After his motion to suppress the firearm was denied, he pleaded “no contest” and appealed.

## **HELD**

The Second District Court of Appeal, Division 5, reversed.

The issue on appeal was whether Paul was “detained,” or only “consensually encountered.” It was not contested by the People that if Paul was detained, then the discovery of his parole status, occurring during an unlawful detention, was illegal, and any resulting evidence (the firearm) should have been suppressed. If only consensually encountered, Paul’s admission to being on parole would have occurred during that lawful conversation, making the discovery of his parole status and the recovery of the firearm lawful. The applicable legal standards here are clear: “An illegal detention that uncovers evidence is generally subject to the exclusionary rule, which dictates the unlawfully obtained evidence be suppressed as ‘fruit of the poisonous tree.’” (*People v. Kasrawi (2021) 65 Cal.App.5th 751, 761.*)

A suspect who is subjected to a “show of authority” by the police will generally be held to have been detained. “The test for the existence of a show of authority is an objective one and does not take into account the perceptions of the particular person involved. The test is ‘not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer’s words and actions would have conveyed that to a reasonable person.’” (*People v. Garry (2007) 156 Cal.App.4th 1100, at p. 1106.*) “This includes an examination of both an officer’s verbal **and** nonverbal actions to ‘assess the coercive effect of police conduct as a whole, rather than emphasizing particular details of that conduct in isolation.’” (*Id.* at p. 1110.) The “totality of the circumstances” is to be considered when evaluating these circumstances.

Clearly, the officers here intended for their contact with defendant to be nothing more than a consensual encounter. As noted by the court, they parked their patrol car behind and to the side of the Prius, purposely leaving room for him to drive away should he choose to do so. They used their flashlights only, choosing not to “spotlight” Paul. In addressing him, the officer’s questions to him “appear to have been non-confrontational in tone and language up to the point when (defendant) stated that he was a parolee.”

Despite officers’ apparent efforts to keep everything low key, however, the court found the contact to be a detention. Specifically, the court ruled that despite the location where the officers parked the patrol car, “the officers’ subsequent positioning of their bodies (as they walked up to defendant’s car) blocked (defendant) from either driving away or departing on foot.” “(Defendant) could not have exited the vehicle with (the one officer) standing there (by the driver’s side door), nor could (defendant) have pulled the Prius out and driven away without either engaging or endangering (that officer).” “Moreover, the presence of (the other officer) on the passenger side of the vehicle prevented (defendant) from sliding across the seat and exiting on foot without engaging (that officer.)”

Further, the court was critical of the officers approaching Paul from both sides of his vehicle while shining “their flashlights into the Prius from close range, right at the car door windows.” The court found this action alone to be “a display of authority that would lead an objective person to believe that he or she was suspected of wrongdoing, both because more than one officer approached and because the officers shined their flashlights on (defendant) from opposite angles, effectively illuminating him on all sides.”

The court also was critical of the officers for “approaching (defendant) while he was talking on his phone inside a legally parked vehicle with the windows rolled up,” noting that Paul “could not reasonably decline to interact with the officers without suspending or ending his phone conversation and at least engaging in a brief conversation with them.”

The court concluded that this set of “circumstances would lead an objectively reasonable person to believe that the officers required their attention and that they could not simply depart.” Based upon this version of the circumstances, the court ruled that such a “show of authority” converted the intended consensual encounter into a detention that was not supported by any reason to believe defendant might have been engaging in criminal conduct. As such, the detention was illegal, requiring the suppression of the firearm as a product of that illegal detention.