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SUPERIOR COURT OF THE LOS ANGELES JUDICIAL DISTRICT
COUNTY OF LOS ANGELES – INGLEWOOD JUVENILE

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. TRE HUNT, Minor.	Case No.: NOTICE OF MOTION TO SUPPRESS TANGIBLE EVIDENCE AND STATEMENTS (WELFARE & INSTITUTIONS CODE §700.1); MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

TO STEVE COOLEY, DISTRICT ATTORNEY FOR THE COUNTY OF LOS ANGELES AND/OR HIS REPRESENTATIVE:

PLEASE TAKE NOTICE that on March 15, YR at 8:30 a.m. or as soon thereafter as counsel may be heard in the courtroom of Department 242, Tre Hunt will move for an order to suppress the following evidence:

> Any and all items of physical evidence allegedly seized from Mr. Hunt, including, but not limited to, the two I-Phone devices, which were unlawfully seized by Officer Perez of the Santa Monica Police Department on July 12, YR.
>
> Any and all statements allegedly made by Mr. Hunt to any law enforcement official following his detention on July 12, YR.

This motion will be based on the attached points and authorities, contents of the court file, witness testimony and all other evidence deemed necessary by the Court.

Dated: March 4, YR

Respectfully Submitted,
CENTER FOR JUVENILE LAW & POLICY,

SAMANTHA BUCKINGHAM,
Attorney for Minor

STATEMENT OF FACTS

In support of this motion, counsel states upon information and belief:

On July 12, YR, Officer Steven Perez and David Alvarez were investigating two I-Phones that were reported missing from the Apple Store in Santa Monica. There was no allegation that Mr. Hunt took the phones from the Apple Store. In fact, there were no suspects whatsoever. Officer Perez and Alvarez, along with an unspecified number of officers from the crime impact team, arrived in the area of Lincoln and Wilshire Boulevard. Officer Perez and

Officer Alvarez stopped their marked police car at the southwest corner of Lincoln and Wilshire Boulevard about four hours after the phones were reported missing. All of the officers were in marked police cars. According to the police report written by Officer Perez, the police "saturated" the area with a police presence. Officer Perez received information that one of the I-Phone devices was in the 1200 block of Lincoln Boulevard and in the "area of Lincoln and Wilshire Boulevard." At this time, there was also information that the phones were in the area of Lincoln Boulevard and Arizona Avenue.

Officer Perez saw Mr. Hunt walking northbound on Lincoln Boulevard. Mr. Hunt was sixteen years old. According to the police report, Officer Perez observed Mr. Hunt walking on the sidewalk "looking around." To Officer Perez, this "looking around" appeared "suspicious." According to Officer Perez, Mr. Hunt made unspecified "movements." Officer Perez then stopped the police car ten feet in front of Mr. Hunt. Officer Perez exited the police car with the purpose of stopping and questioning Mr. Hunt. Officer Perez spoke to Mr. Hunt. According to his police report, Officer Perez told Mr. Hunt that the police were conducting an investigation into the theft of two I-Phones. Officer Perez directly asked Mr. Hunt about stolen I-Phones. In response to Officer Perez's inquiry about I-Phones, Mr. Hunt handed Officer Perez one I-Phone. Then, Officer Perez asked Mr. Hunt if Mr. Hunt had anything else on his person. In response, Mr. Hunt handed Officer Perez another I-Phone.

At some later point, Officer Perez read Mr. Hunt his Miranda rights. In response to Officer Perez's question asking Mr. Hunt what happened, Mr. Hunt made statements. The only record of the statements the People attribute to Mr. Hunt were recorded sometime later by Officer Perez in his police report.[1]

MEMORANDUM OF POINTS AND AUTHORITIES

[1] Even if the statements were deemed by the court to be admissible, counsel for Mr. Hunt will challenge the accuracy of the statements at adjudication. Mr. Hunt does not concede that the substance of the statements and surrounding circumstances were accurately captured in the police report.

OFFICER PEREZ VIOLATED MR. HUNT'S FOURTH AMENDMENT RIGHTS BECAUSE OFFICER PEREZ CONDUCTED A TERRY STOP OF MR. HUNT WITHOUT REASONABLE ARTICULABLE SUSPICION.

A. Officer Perez Seized Mr. Hunt When Officer Perez Approached Mr. Hunt.

The Fourth Amendment of the federal Constitution, and a similar provision in the California Constitution, prohibit unreasonable seizures. U.S. Const. amend. IV; Cal. Const. art. I, § 13. A seizure occurs when taking into account all of the circumstances surrounding the incident, a reasonable person would not have believe he was free to leave. U.S. v. Mendenhall, 446 U.S. 544, 554 (1980). Furthermore, an individual's "Fourth Amendment rights are implicated" when an officer stops or detains an individual because the officer believes the individual is involved in some criminal activity. In re Tony C., 21 Cal. 3d 888, 895 (1978). Fourth Amendment rights are not implicated if an officer wishes to question a person as a witness or for some other purpose that has nothing to do with detection of a crime. Id.

Mr. Hunt was seized when Officer Perez exited the marked police car to contact Mr. Hunt. Taking into account the circumstances here, it is clear that a reasonable person of Mr. Hunt's age would not have felt at liberty to ignore the police and continue on his way: there was a strong police presence, Mr. Hunt was walking by himself, a police car with two uniformed officers stopped ten feet in front of him, Officer Perez thwarted Mr. Hunt's progress forward on the sidewalk, and Mr. Hunt was barely sixteen years old. J.D.B. v. North Carolina, 131 S. Ct. 2394, 2403 (2011) (finding in the context of a custody determination for Miranda purposes that "a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go").

Additionally, Mr. Hunt's Fourth Amendment rights were implicated, requiring at least reasonable articulable suspicion for the stop. Instead, Officer Perez stopped Mr. Hunt because of a hunch that Mr. Hunt was involved in the I-Phone theft. Lastly, Officer Perez did not question Mr. Hunt for any other purpose other than determining whether Mr. Hunt was personally involved in the theft of the I-Phones.

B. Officer Perez Had No Reasonable Articulable Suspicion To Justify The Brief Investigative Stop.

At its inception, the seizure of Mr. Hunt was a Terry stop without a reasonable articulable suspicion that criminal activity was afoot as required to justify this type of brief investigative stop under Terry v. Ohio, 392 U.S. 1, 22 (1968). Florida v. J.L., 529 U.S. 266, 272 (2000); Alabama v. White, 496 U.S. 325, 330 (1990); In re Tony C., 21 Cal. 3d at 893; People v. Durazo, 124 Cal. App. 4th 728, 731 (Cal. Ct. App. 2004). A seizure violates the Fourth Amendment for purposes of an investigative stop if, based on the totality of the circumstances, the detaining officer does not have a "particularized and objective basis for suspecting the particular person stopped of criminal activity." United States v. Cortez, 449 U.S. 411, 417-18 (1981). To justify a detention or an investigative stop, "the circumstances known or apparent to the officer must include specific and articulable facts, which viewed objectively, would cause a reasonable officer to suspect that (1) some activity relating to a crime has taken place or is occurring or about to occur, and (2) the person the officer intends to stop or detain is involved in that activity." In re Tony C., 21 Cal. 3d at 893; People v. Conway, 25 Cal. App. 4th 385, 388 (Cal. Ct. App. 1994).

Although, an "investigative stop...predicated on circumstances which, when viewed objectively, support a mere curiosity, rumor, or hunch is unlawful, even though the officer may be acting in complete good faith." In re Tony C., 21 Cal. 3d at 893. Moreover, an officer cannot justify a detention retroactively because the hunch is later found to be correct. People v. Perrusquia, 150 Cal. App. 4th 228, 234 (Cal. Ct. App. 2007).

Before Officer Perez seized Mr. Hunt for an investigative stop, he lacked an objective basis for concluding that criminal activity was taking place or about to occur. Officer Perez did not point to specific or articulable facts. There was no description of potential suspects. The facts Officer Perez relied on to suspect criminal activity did not particularly point to Mr. Hunt. When viewed objectively, the facts relied on by Officer Perez supported, at best, a mere hunch. Officer Perez cannot use the fact that the hunch turned out to be correct to retroactively justify

the detention. Officer Perez's assertions are nonspecific and would not reasonably create a suspicion that criminal activity is afoot.

Because Officer Perez lacked a reasonable articulable suspicion, his investigative stop of Mr. Hunt was unlawful and thus violated Mr. Hunt's Fourth Amendment rights.

C. Officer Perez Did Not Have Probable Cause When He Seized Mr. Hunt.

When facts are known to an arresting officer that would persuade someone of "reasonable caution" that the person to be arrested has committed a crime, probable cause exists. Dunaway v. New York, 442 U.S. 200, 208, n.9 (1979); Illinois v. Gates, 462 U.S. 213, 243 (1983); People v. Scott, 52 Cal. 4th 452, 474 (2011). There was no probable cause for an arrest because there were no facts available to Officer Perez to persuade him that Mr. Hunt had committed a crime. The facts would not have persuaded anyone of "reasonable caution" that Mr. Hunt had committed a crime. Officer Perez had a hunch at best that Mr. Hunt was involved in criminal activity; this does not constitute probable cause.

II. MR. HUNT'S ALLEGED STATEMENTS TO OFFICER PEREZ MUST BE SUPPRESSED.

A. The Statements Were Fruits Of A Violation Of The Fourth Amendment.

Where evidence seized in violation of the Fourth Amendment is sought to be admitted in a juvenile or criminal prosecution, the only suitable remedy is to apply the exclusionary rule to the evidence. In re William G, 709 P.2d 1287, 1303 n. 17 (Cal. 1985); see also Wong Sun v. United States, 371 U.S. 471, 486 (1963). Accordingly, because Mr. Hunt's detention was in violation of the Fourth Amendment, all evidence seized during this unlawful detention must be suppressed.

Furthermore, statements made during an illegal detention, even though the statements are voluntarily given, are inadmissible "if they are the product of the illegal detention." Florida v. Royer, 460 U.S. 491, 501 (1983); see also Dunaway v. New York, 442 U.S. 200, 218-19 (1979); Brown v. Illinois, 422 U.S. 590, 601-02 (1975). In this case, Mr. Hunt's statements were

obtained during his unlawful detention, and were the product of that detention. Because Mr. Hunt's statements were, "not the product of an independent act of free will," Royer, 460 U.S. at 501, the statements must be suppressed along with the evidence seized during the detention.

B. Mr. Hunt's Fourteenth Amendment Due Process Rights Were Violated Because His Statements Were Not Voluntary.

The prosecution must show that the statements made by Mr. Hunt were a product of rational intellect and free will. Mincey v. Arizona, 437 U.S. 385, 398 (1978). Mr. Hunt has a constitutional right to a fair hearing on this matter at which the government bears the burden of providing the voluntariness of her statements by a preponderance of the evidence. See Lego v. Twomey, 404 U.S. 477, 489 (1972); Jackson v. Denno, 378 U.S. 368, 376-77 (1964).

In assessing voluntariness, a court should consider the "totality of the circumstances." Colorado v. Connelly, 479 U.S. 158, 176 (1986). In this case, there are no facts to support a finding that Mr. Hunt's statements were the product of rational intellect and free will. Statements taken during an illegal detention are involuntary; the illegal detention vitiates any subsequent consent to a search. In re Antonio B., 166 Cal. App. 4th 435, 442 (Cal. Ct. App. 2008); People v. Krohn, 149 Cal. App. 4th 1294, 1299 (Cal. Ct. App. 2007); People v. Saldana, 101 Cal. App. 4th 170, 176 (Cal. Ct. App. 2002). Any statements made on the scene of the arrest were involuntary because they were the result of an illegal detention. In re Antonio B., 166 Cal. App. 4th at 442; Krohn, 149 Cal. App. 4th at 1299; Saldana, 101 Cal. App. 4th at 176. Mr. Hunt was only sixteen years old and in the ninth grade at the time of his interrogation. Mr. Hunt had a reasonable belief that he was required to respond to a police officer's questions and that failing to respond would create further trouble. Under such circumstances, Mr. Hunt's statements could not be the product of a rational intellect and free will.

Involuntary statements are to be excluded from trial for all purposes. Jackson v. Denno, 378 U.S. 368, 385-86 (1964); People v. Neal, 31 Cal. 4th 63, 79 (2003).

C. The Alleged Statements Must Be Suppressed As They Were Obtained In Violation Of Mr. Hunt's Fifth Amendment Rights As Set Forth in Miranda v. Arizona.

Where a defendant is in custody and subjected to interrogation, or its functional equivalent, he must be clearly informed that he has the right to remain silent, the right to have counsel present, and that any statement he makes may be used as evidence against him. Miranda v. Arizona, 384 U.S. 436, 444 (1966). If he is not informed of these rights, any statements made during the interrogation cannot be used against him. Id. Custody is imposed once an investigating officer physically deprives a suspect of his freedom of action in any significant way or reasonably leads the suspect to believe that he is so deprived. Id. The functional equivalent of interrogation occurs when a law enforcement officer uses words or actions that the officer knows are reasonably likely to elicit an incriminating response. Rhode Island v. Innis, 446 U.S. 291, 301 (1980).

When a police officer gives Miranda warnings mid-interrogation, after the defendant has already given an unwarned confession, the confession repeated after the Miranda warning is inadmissible. Missouri v. Seibert, 542 U.S. 600, 612, 617 (2004). Here, there are two sets of statements: (1) statements at the scene of Mr. Hunt's arrest before Officer Perez read Mr. Hunt his Miranda rights, and (2) statements at the station-house made after the People assert that Mr. Hunt was read Miranda rights and knowingly, intelligently, voluntarily waived those rights. On the scene of the arrest, Mr. Hunt was in custody and Officer Perez deprived Mr. Hunt of his freedom of action. Questioning at this time constituted a custodial interrogation. No Miranda rights were read to Mr. Hunt at this point. Whether Officer Perez communicated in the form of questions or the functional equivalent of interrogation, Mr. Hunt's statements were taken in violation of Miranda and are to be excluded from the People's case in chief.

The People must prove that the statements at the station-house were made after Mr. Hunt was read Miranda rights and that Mr. Hunt knowingly, intelligently, voluntarily waived those rights. North Carolina v. Butler, 441 U.S. 369, 373 (1979); Fare v. Michael, 442 U.S. 707, 724 (1979). Whether the accused made such a waiver is determined by the facts and circumstances

of the case, including the background and experience of the accused. Butler, 441 U.S. at 374-75. In assessing whether a juvenile properly waived his rights, the court must consider the juvenile's age, experience, background, and intelligence as a part of the totality of the circumstances. Fare, 442 U.S. at 725. Mr. Hunt's age and education level made him highly susceptible to police coercion. See J.D.B. v. North Carolina, 131 S. Ct. 2394, 2403 (2011). Mr. Hunt was only sixteen years old and in a special education program with an Individualized Education Program (IEP) to suit his needs. Officer Perez made no efforts to ensure or to sufficiently confirm that Mr. Hunt understood his rights. Considering all of the circumstances, the government cannot meet its substantial burden of demonstrating that Mr. Hunt waived his Fifth Amendment rights.

Officer Perez did not cure the previous violation of Mr. Hunt's Miranda rights, that of the unwarned interrogation at the scene, when Officer Perez later read Mr. Hunt his Miranda rights at the station-house. Seibert, 542 U.S. at 612, 617.

. ALL EVIDENCE OBTAINED FROM MR. HUNT'S UNLAWFUL DETENTION IS A FRUIT OF THAT STOP AND MUST BE SUPPRESSED.

Where illegality is established for a stop, by, for instance, violating the Fourth Amendment, all evidence seized from that stop by exploitation of that illegality is 'fruit of the poisonous tree', unless the evidence was obtained by, "...means sufficiently distinguishable to be purged of the primary taint." Wong Sun, 371 U.S. at 488. Here, as discussed above, Officer Perez did not have a reasonable articulable suspicion that a crime had been committed. Without such basis, Officer Perez did not have a legal basis to stop and interrogate Mr. Hunt. Directly from this illegal stop, Officer Perez immediately sought incriminating information from Mr. Hunt.

Because the only means by which Officer Perez obtained the evidence, I-Phones and any statements, was through the illegality of the stop, the evidence Officer Perez seized from Mr. Hunt was obtained in violation of the Fourth Amendment and must be suppressed as the 'fruit of the poisonous tree". Id., at 486.

IV. CONCLUSION

Accordingly, the Fourth, Fifth, and Fourteenth Amendments of both the United States and California Constitutions, along with the exclusionary rule, mandate that any and all evidence seized from Mr. Hunt, including the I-Phones and any statements, may not be introduced at trial because such evidence is the direct product of an unlawful detention. Further, all statements must be suppressed as violative of the Fifth and Fourteenth Amendments. All physical evidence and statements secured by Santa Monica Police Department on July 12, YR, must be excluded from the evidence at trial.

Respectfully Submitted,

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SAMANTHA BUCKINGHAM
Attorney for Minor Tre Hunt