

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION EIGHT

**In re Willie B. (a minor), a Person Coming
Under the Juvenile Court Law.**

Case No. B 249718

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

Willie B.,

A Minor.

Los Angeles County Superior Court, Case No. YJ37053
Inglewood Juvenile Court and Compton Juvenile Court
The Honorable Tamara Hall and Honorable Irma J. Brown, Judges

RESPONDENT'S BRIEF

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TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	1
STATEMENT OF FACTS	2
A. Prosecution evidence	2
B. Defense evidence	3
ARGUMENT	3
The Trial Court Properly Denied Appellant’s Suppression Motion.....	3
A. Standard of review	5
B. The brief detention of appellant was reasonably related to the serious crime being investigated	5
C. Officer Lane’s concerns for his safety justified the pat-down search	8
D. In any event, Officer Lane could lawfully search appellant because he had probable cause to arrest him for the robbery.....	11
CONCLUSION	12

TABLE OF AUTHORITIES

	Page
CASES	
<i>Adams v. Williams</i> (1972) 407 U.S. 143 [92 S.Ct. 1921, 32 L.Ed.2d 612].....	5, 10
<i>Antonio B.</i> (2008) 166 Cal.App.4th 435	8
<i>Arizona v. Johnson</i> (2009) 555 U.S. 323 [129 S.Ct. 781, 172 L.Ed.2d 694].....	6
<i>Graham v. Connor</i> (1989) 490 U.S. 386 [109 S.Ct. 1865, 104 L.Ed.2d 443].....	7
<i>Illinois v. Wardlow</i> (2000) 528 U.S. 119 [120 S.Ct. 673, 145 L.Ed.2d 570].....	6, 9
<i>In re Frank V.</i> (1991) 233 Cal.App.3d 1232	9
<i>In re H.M.</i> (2008) 167 Cal.App.4th 136	9, 10
<i>In re Lennies H.</i> (2005) 126 Cal.App.4th 1232	12
<i>Michigan v. Long</i> (1983) 463 U.S. 1032 [103 S.Ct. 3469, 77 L.Ed.2d 1201].....	9
<i>Minnesota v. Dickerson</i> (1993) 508 U.S. 366 [113 S.Ct. 2130, 124 L.Ed.2d 334].....	6
<i>Ornelas v. United States</i> (1996) 517 U.S. 690 [116 S.Ct. 1657, 134 L.Ed.2d 911].....	5
<i>People v. Bennett</i> (1998) 17 Cal.4th 373	6
<i>People v. Celis</i> (2004) 33 Cal.4th 667	5, 8

TABLE OF AUTHORITIES
(continued)

	Page
<i>People v. Craig</i> (1978) 86 Cal.App.3d 905	9, 11
<i>People v. Curtis</i> (1969) 70 Cal.2d 347	4, 9, 11
<i>People v. Fay</i> (1986) 184 Cal.App.3d 882	12
<i>People v. Gonzalez</i> (1990) 51 Cal.3d 1179	4
<i>People v. Ingle</i> (1960) 53 Cal.2d 407	12
<i>People v. Leyba</i> (1981) 29 Cal.3d 591	5
<i>People v. Osborne</i> (2009) 175 Cal.App.4th 1052	9
<i>People v. Souza</i> (1994) 9 Cal.4th 224	6
<i>Rawlings v. Kentucky</i> (1980) 448 U.S. 98 [100 S.Ct. 2556, 65 L.Ed.2d 633].....	11
<i>Terry v. Ohio</i> (1968) 392 U.S. 1 [88 S.Ct. 1868, 20 L.Ed.2d 889]	passim
<i>United States v. Arvizu</i> (2002) 534 U.S. 266 [122 S.Ct. 744, 151 L.Ed.2d 740].....	6
<i>United States v. Robinson</i> (1973) 414 U.S. 218 [94 S.Ct. 467, 38 L.Ed.2d 427]	11
<i>United States v. Sokolow</i> (1989) 490 U.S. 1 [109 S.Ct. 1581, 104 L.Ed.2d 1]	6

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

Pen. Code

§ 211	1
§ 484e, subd. (d).....	1
§ 496, subd. (a).....	1
§ 833.5	6
§ 833.5, subd. (a).....	5, 6
§ 12022.53, subd. (b).....	1
Welf. & Inst. Code § 602	1

CONSTITUTIONAL PROVISIONS

U. S. Const. 4th Amend.	5, 6, 7
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STATEMENT OF THE CASE

The Los Angeles County District Attorney filed a petition pursuant to section 602 of the Welfare and Institutions Code, alleging that on October 24, 2012, appellant committed the following crimes: one count of second degree robbery (Pen. Code, §211),¹ one count of receiving stolen property (§ 496, subd. (a)), and one count of theft (§ 484e, subd. (d)). (1CT 1-3.) With respect to the robbery allegation, the petition also alleged that appellant used a firearm within the meaning of section 12022.53, subdivision (b). (1CT 1.) Appellant initially denied the allegations, but then admitted the theft allegation in exchange for the dismissal of the other counts. The juvenile court placed appellant on probation. (1CT 14-16.)

The Los Angeles County District Attorney filed another petition pursuant to section 602 of the Welfare and Institutions Code, alleging that on January 23, 2013, appellant committed two counts of second degree robbery in violation of section 211 against victims Miguel Ayon and Graciela Lopez. (1CT 17.)

Appellant made a motion to suppress, which the juvenile court denied. (1CT 33.) The court found both allegations to be true and sustained the petition. (1CT 33.) Appellant also admitted to violating his probation. (1CT 36.) The court declared appellant a ward of the court and ordered him suitably placed in the Camp Community Placement Program for three months, with a maximum confinement time of six years and eight months. Appellant was placed on probation for six months. The court gave appellant 96 days of predisposition credit. (1CT 36.)

Appellant filed a notice of appeal. (1CT 38-39.)

¹ Unless stated otherwise, all further statutory references are to the Penal Code.

STATEMENT OF FACTS

The evidence presented at the suppression hearing showed the following.

A. Prosecution Evidence

On the afternoon of January 23, 2013, Miguel Ayon (“Miguel”) was with his girlfriend, Graciela Lopez (“Graciela”), near the intersection of Gramarcy and Vernon in Los Angeles County. (1RT 3.) Appellant and another man approached the couple. (1RT 4.) Appellant asked Miguel where he was from. (1RT 4.) The men began to follow the couple. (1RT 4.) Appellant told his companion “that he had a gun and that he should just kill [Miguel]” because appellant thought Miguel was someone they knew. (1RT 7.) Appellant repeatedly insisted, “Let me shoot him, let me shoot him.” (1RT 16.) Miguel was afraid appellant had a gun but did not see a weapon because appellant was behind him. (1RT 7.) Appellant suddenly changed his pace and rapidly approached Miguel from behind. (1RT 8.) Because appellant had a gun in his hands, Miguel let appellant take his wallet. (1RT 8-9.) Graciela was afraid and gave appellant’s companion her cellular phone. (1RT 14, 17-18.)

Later that day, Graciela went to the police station to report the robbery and saw appellant standing at the corner of Western and Vernon on her way there. (1RT 19-20.) Officer Patrick Lane of the Los Angeles Police Department took the robbery report from Miguel and Graciela. (1RT 27.) The victims told Officer Lane how they had been robbed of a wallet and a cell phone. (1RT 34.) Miguel and Graciela gave a detailed description of the two men who had robbed them to the police. (1RT 21.) They were able to describe appellant because they had seen his face and what he was wearing several times during the robbery. (1RT 13, 19, 21.) They described one of the robbery suspects as a Black man, about 5’9”, with a

thin build and a dark complexion, wearing a dark baseball hat or beanie, a black T-shirt, and red sweat pants. (1RT 28.)

An hour after the robbery, Officer Lane saw appellant a couple of blocks away from where the robbery took place. (1RT 26-28, 31.) Appellant was standing in front of a house on the sidewalk. (1RT 30.) Appellant looked “exactly” as described by the victims, and he was wearing a baseball hat, a black T-shirt, and red sweat pants. (1RT 28.) He was with another man who loosely fit the description of the second man who had participated in the robbery. (1RT 28-29.) Officer Lane told appellant not to leave, told appellant he was conducting an investigation, and handcuffed appellant. (1RT 30-31.) Officer Lane conducted a brief pat-down search of appellant to “make sure he didn’t have a weapon” but waited for other officers to arrive to conduct a more thorough pat-down search and to secure appellant so that Officer Lane could pick up the victims for a “field show-up.” (1RT 31.) Once additional officers arrived, Officer Lane searched appellant’s person and felt a hard object the size of a cell phone in appellant’s pocket; he retrieved a black cell phone from appellant’s pocket. (1RT 28, 32.) Officer Lane then showed the phone to Graciela, who was able to unlock the phone and identify it as hers. (1RT 22, 29.)

B. Defense Evidence

The defense did not present any evidence. (1RT 35.)

ARGUMENT

THE TRIAL COURT PROPERLY DENIED APPELLANT’S SUPPRESSION MOTION

The trial court heard argument on the suppression motion. (1RT 36-41.) The People opposed appellant’s motion on several grounds: (1) Officer Lane had probable cause to arrest appellant because he matched the

victims' detailed description of the robbery suspect; (2) Officer Lane then conducted a search incident to arrest and lawfully recovered the victim's stolen phone; and (3) Officer Lane also had reasonable suspicion to conduct a pat-down search because the robbery report specified that a firearm was used, putting the officer on "higher alert" and justifying a protective pat-down. (1RT 36.) The defense disputed the search's legality. (1RT 38-40.) Counsel's argument relied heavily on the four-decade-old case of *People v. Curtis* (1969) 70 Cal.2d 347, disapproved of on other grounds in *People v. Gonzalez* (1990) 51 Cal.3d 1179. While the central issue in *Curtis* was whether the defendant lawfully resisted arrest, the court also found that because the officer's knowledge was limited to a "cursory description" of the suspect's race, height, and clothing, the officer lacked probable cause to arrest. (*Curtis, supra*, 70 Cal.2d at p. 350.)

The trial court denied the suppression motion. (1RT 43-45.) With respect to the initial detention and pat-down search of appellant, the court found Officer Lane properly detained appellant based on the detailed robbery report, and lawfully searched appellant due to concerns for officer safety. (1RT 45.) The court also found that Officer Lane had probable cause to arrest appellant, distinguishing *Curtis* because this case involved much more detailed descriptions from multiple witnesses. (1RT 45.) The court upheld the more thorough search as a legitimate search incident to arrest, justifying the seizure of the victim's cell phone from appellant. (1RT 45.)

Appellant now argues that the trial court erred in denying his suppression motion because: (1) there was insufficient probable cause to arrest appellant, and (2) the search could not be justified in the alternative as the product of an investigatory detention because the initial pat-down did not reveal the stolen cell phone. (AOB 5-8.) Respondent disagrees. First, Officer Lane's legitimate concerns for his safety justified the pat-down

search. In any event, Officer Lane lawfully searched appellant incident to his arrest because probable cause existed that appellant committed the reported robberies.

A. Standard of Review

When reviewing a trial court’s denial of a motion to suppress, an appellate court defers to the trial court’s factual findings if they are supported by substantial evidence. (*People v. Leyba* (1981) 29 Cal.3d 591, 596-597.) Reviewing courts give due weight to factual inferences drawn by local law enforcement officers. (*Ornelas v. United States* (1996) 517 U.S. 690, 699 [116 S.Ct. 1657, 134 L.Ed.2d 911].) Then the reviewing court exercises its own independent judgment to determine whether, on those facts, the seizure met the Fourth Amendment standard of reasonableness. (*People v. Leyba, supra*, 29 Cal.3d at pp. 596-597.)

B. The Brief Detention of Appellant Was Reasonably Related to the Serious Crime Being Investigated

Reasonable suspicion justified appellant’s brief detention. In the early evening, Officer Lane observed appellant, a juvenile who “exactly” matched the description of a suspect in a reported recent armed robbery. Appellant was standing near the scene of the crime only a few hours after the robbery. These facts amounted to reasonable suspicion and allowed the officer to detain appellant. (See, e.g., Pen. Code, § 833.5, subd. (a) [authorizing the detention of a person suspected of any weapons violation]; *Adams v. Williams* (1972) 407 U.S. 143, 145 [92 S.Ct. 1921, 32 L.Ed.2d 612] [“The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape”].)

The brief stop of appellant was “merely an investigative detention requiring no more than a reasonable suspicion.” (*People v. Celis* (2004) 33 Cal.4th 667, 674, citing *Terry v. Ohio* (1968) 392 U.S. 1, 6–7 [88 S.Ct.

1868, 20 L.Ed.2d 889] (*Terry*).) Under the leading decision of *Terry v. Ohio*, ““where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot. . .,’ the officer may briefly stop the suspicious person and make ‘reasonable inquiries’ aimed at confirming or dispelling his suspicions.” (*Terry, supra*, 392 U.S. at p. 30, quoted in *Minnesota v. Dickerson* (1993) 508 U.S. 366, 373 [113 S.Ct. 2130, 124 L.Ed.2d 334]; see also *Arizona v. Johnson* (2009) 555 U.S. 323, 326 [129 S.Ct. 781, 172 L.Ed.2d 694].) An investigative detention is valid if police have reasonable suspicion that “(i) criminal activity may be afoot, and (ii) the person detained is connected with the possible criminal activity.” (See *Illinois v. Wardlow* (2000) 528 U.S. 119 [120 S.Ct. 673, 145 L.Ed.2d 570]; *United States v. Sokolow* (1989) 490 U.S. 1, 7-8 [109 S.Ct. 1581, 104 L.Ed.2d 1]; *People v. Bennett* (1998) 17 Cal.4th 373, 386.)

Courts require far less of a showing to establish reasonable suspicion than probable cause. (*Illinois v. Wardlow, supra*, 528 U.S. at p. 123 [“considerably less than preponderance of the evidence. . .”]; see also *United States v. Arvizu* (2002) 534 U.S. 266, 274 [122 S.Ct. 744, 151 L.Ed.2d 740].) To render a detention reasonable under the Fourth Amendment, police officers must simply point to “specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.” (*People v. Souza* (1994) 9 Cal.4th 224, 231.)

Here, several circumstances objectively indicate the reasonableness of appellant’s brief detention. Primarily, the California Legislature recognized the danger that deadly weapons pose to police officers when it enacted Penal Code section 833.5. This law specifically allows police officers to detain an individual who they suspect possesses any deadly weapon to determine if a weapon-related crime has been committed. (§ 833.5, subd.

(a.) Here, Officer Lane was investigating a firearm-related crime when he made contact with appellant, who matched the description of the gun-toting suspect in the crime and was a couple of blocks away from where the robbery took place. (1RT 26-28.) Additionally, Officer Lane was by himself, so concerns for his safety were heightened. (1RT 31.) Consequently, Officer Lane reasonably feared that appellant might possess a weapon and handcuffed him to safely conduct his investigation. (1RT 31.) A man of reasonable caution, and particularly, a police officer with over five years of training and experience, would have been concerned that appellant might be armed. (See 1RT 26 [Officer Lane has 5 years of experience].) Thus, appellant’s detention was reasonably necessary to confirm or dispel the officer’s reasonable suspicion.

Further, the experience and training of police officers inform their evaluations of reasonable suspicion, as well as underlying concerns for their safety and that of the public. *Terry* itself instructs courts to consider the simple question of “whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” (*Terry, supra*, 392 U.S. at p. 27.) Fourth Amendment reasonableness analysis allows “for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving. . . .” (*Graham v. Connor* (1989) 490 U.S. 386, 396-397 [109 S.Ct. 1865, 104 L.Ed.2d 443].) Here, Officer Lane initiated contact with appellant because he “exactly” matched the detailed description of a recent reported robbery suspect. (1RT 28.) In fact, appellant concedes that the description provided by the victims to Officer Lane “would justify an investigatory detention in this case.” (AOB 5.) Viewed through the lens of the officer’s years of experience, and under the totality of the circumstances, appellant’s brief detention was warranted to

investigate what danger the evolving situation presented to the police and the public.

Appellant contends “there was no mere ‘investigatory detention’” because appellant was told not to leave and handcuffed. (AOB 6.) But simply handcuffing a suspect does not necessarily transform a lawful detention into a de facto arrest. (See *People v. Celis*, *supra*, 33 Cal.4th at pp. 675-676 [where the California Supreme Court held that stopping a defendant at gunpoint, handcuffing him, and ordering him to sit on the ground for two minutes was a detention, not an arrest].) To determine whether contact was a lawful detention or an unlawful arrest, courts evaluate (1) the intrusiveness of the detention (i.e., the methods used by police) and (2) the justification for the restraint employed (i.e., the danger posed to the officer). (See generally *Antonio B.* (2008) 166 Cal.App.4th 435.) Here, Officer Lane encountered appellant in the early evening by himself; appellant was suspected of robbing two people with a gun mere blocks away, an hour before. (See 1RT 3 [robbery occurred around 4:30 p.m.]; see 1RT 26 [Officer Lane made contact with appellant around 5:30 p.m. a couple blocks from the robbery].) Officer Lane handcuffed appellant quickly while he waited for back-up so that he could safely conduct his investigation; as Officer Lane handcuffed appellant, he told him that he was simply conducting an investigation. (1RT 31.) Thus, because the intrusiveness of the handcuffing was minimal compared to the danger an armed suspect posed to Officer Lane, the restraint used here did not transform the lawful investigatory detention into an unlawful arrest.

C. Officer Lane’s Concerns for His Safety Justified the Pat-down Search

Officer Lane was reasonably concerned for his safety, thus necessitating the pat-down search of appellant. Courts have repeatedly “upheld the validity of a protective search for weapons in the absence of

probable cause to arrest because it is unreasonable to deny a police officer the right ‘to neutralize the threat of physical harm,’ [] when he possesses an articulable suspicion that an individual is armed and dangerous.”

(*Michigan v. Long* (1983) 463 U.S. 1032, 1034 [103 S.Ct. 3469, 77 L.Ed.2d 1201], internal citations omitted; see also *Terry, supra*, 392 U.S. 1.) A protective frisk will be upheld if an officer can “point to specific and articulable facts which, considered in conjunction with rational inferences to be drawn therefrom, give rise to a reasonable suspicion that the suspect is armed and dangerous.” (*In re H.M.* (2008) 167 Cal.App.4th 136, 143, internal quotation marks omitted.) “[T]he crux of the issue is whether a reasonably prudent person in the totality of the circumstances would be warranted in the belief that his or her safety was in danger.’ [Citations.]” (*Id.* at pp. 143-144; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1240.) Courts require far less of a showing to establish reasonable suspicion than probable cause. (*Illinois v. Wardlow, supra*, 528 U.S. at p. 123 [“considerably less than preponderance of the evidence . . .”].) A pat-down search should be upheld if a “substantial possibility” existed that the individual was armed; the police do not need the “quantum of evidence” required for a full-blown arrest. (See *People v. Osborne* (2009) 175 Cal.App.4th 1052, 1061.)

Here, Officer Lane was investigating an armed robbery and approached appellant because he “exactly” matched what the trial court described as a detailed description of the suspect. (See 1RT 43 [where the trial court distinguished the cursory description provided to police in *Curtis, supra*, 70 Cal.2d 347, from the detailed description here].) Courts have held that when officers are investigating an armed robbery and suspect a firearm was used, such knowledge is sufficient to justify a pat-down search under the totality of the circumstances. (See, e.g., *People v. Craig* (1978) 86 Cal.App.3d 905, 911-912 [where the court upheld a detention

and pat-down search even though the suspect “did not perfectly match the general description given”].) Therefore, Officer Lane’s concerns for officer safety justified the search here.

Appellant notes that the “initial pat down for officer safety did not yield the cell phone.” (AOB 6.) But this fact does not detract from the lawfulness of the more thorough subsequent search that did uncover the stolen property. The “sole justification for the [pat-down] search is the protection of the officer and others nearby.” (*In re H.M.*, *supra*, 167 Cal.App.4th at p. 143.) A pat-down is not designed to recover evidence of a crime, but to ensure that a police officer may properly perform “the officer’s *investigatory duties*, for without [the pat-down] ‘the answer to the police officer may be a bullet.’” (*Terry*, *supra*, 392 U.S. at p. 8, emphasis added; see also *Adams v. Williams*, *supra*, 407 U.S. at p. 146 [explaining that protective pat-downs “allow the officer to pursue his investigation without fear of violence”].) Thus, here the pat-down did not end appellant’s lawful detention but instead allowed Officer Lane to safely detain appellant initially while waiting for additional officers to arrive. It was entirely reasonable for an officer alone like Officer Lane, trying to safely detain an armed robbery suspect while another was potentially nearby, to wait for back-up before conducting a more thorough pat-down search. (See 1RT 31 [Officer Lane was unable to detain man appellant was standing with because he was “in the wind” once encounter began].) Once additional officers reached the scene, the more thorough pat-down search allowed the police to confirm or dispel their reasonable suspicion through proper investigation, while at the same time protecting officer safety.

D. In Any Event, Officer Lane Could Lawfully Search Appellant Because He Had Probable Cause to Arrest Him for the Robbery

The constitutionality of the search could also be upheld because Officer Lane could have lawfully arrested appellant. Officer Lane had probable cause to arrest appellant because appellant “exactly” matched the detailed description the victims provided to the police of the robbery that had occurred mere blocks away and a mere hour before the arrest. Appellant disputes the probable cause in this case by relying on *Curtis, supra*, 70 Cal.2d 347, and *Craig, supra*, 86 Cal.App.3d 905. However, both of those cases are plainly distinguishable because the suspects did not *precisely* match the *general* descriptions that police were investigating; in contrast, here Officer Lane found that appellant “exactly” matched the *detailed* description the victims had just provided directly to Officer Lane. Further, appellant was found only a couple of blocks from the scene of the robbery, only an hour after it had occurred. The trial court found this case distinguishable from others where officers were only operating on cursory or general descriptions; this Court should similarly find that Officer Lane had probable cause to lawfully search appellant incident to his arrest.

The fact that appellant had not yet been placed under arrest at the time of the search is constitutionally irrelevant; the search was valid as long as the officers had probable cause to arrest, *even though the officers had not yet affected the arrest*. It is well established that officers may search an individual pursuant to a custodial arrest. (*United States v. Robinson* (1973) 414 U.S. 218, 235 [94 S.Ct. 467, 38 L.Ed.2d 427].) Moreover, officers may search someone incident to arrest *before* the formal pronouncement of arrest. (*Rawlings v. Kentucky* (1980) 448 U.S. 98, 111 [100 S.Ct. 2556, 65 L.Ed.2d 633] [“Where the formal arrest followed quickly on the heels of the challenged search of petitioner’s person, we do not believe it

particularly important that the search preceded the arrest rather than vice versa. [Citations.]”]; *People v. Ingle* (1960) 53 Cal.2d 407, 413 [a search incident to an arrest may precede the arrest]; *In re Lennies H.* (2005) 126 Cal.App.4th 1232, 1239-1240 [“The fact that a defendant is not formally arrested until after the search does not invalidate the search if probable cause to arrest existed prior to the search and the search was substantially contemporaneous with the arrest. [Citations.]”]; *People v. Fay* (1986) 184 Cal.App.3d 882, 892 [“The crucial point is whether probable cause to arrest existed prior to the search”].) Thus, here the officers properly searched appellant based on their authority to arrest him for the robbery; the officers had probable cause to arrest at the time of the search, and nothing more was required.

CONCLUSION

Accordingly, respondent respectfully requests that the judgment be affirmed.

Dated: January 21, 2014

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S BRIEF** uses a 13 point Times New Roman font and contains **3,498** words.

Dated: January 21, 2014

KAMALA D. HARRIS
Attorney General of California

Handwritten signature of Kamala D. Harris, consisting of a stylized 'K' followed by a long horizontal flourish.

JESSICA C. OWEN
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **In re: Willie B. (a minor)**

No.: **B249718**

I declare: I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On **January 21, 2014**, I electronically filed the attached **RESPONDENT'S BRIEF** with the Clerk of the Court using the Online Form provided by the California Court of Appeal, Second Appellate District.

I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On **January 21, 2014**, I served the attached **RESPONDENT'S BRIEF** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

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The one copy for the California Appellate Project was placed in the box for the daily messenger run system established between this Office and California Appellate Project (CAP) in Los Angeles for same day, personal delivery.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **January 21, 2014**, at Los Angeles, California.

Nora Fung

Declarant

JCO: nf/LA2013609702/51439561.doc

Signature