

## GUEST COLUMN

# Hoodies, racial stereotypes, and the California Racial Injustice Act

By K. Chike Odiwe

A unanimous three-judge panel of the 4th District Court of Appeal (Appellate Court) found that San Diego Superior Court Judge Howard Shore (Judge Shore) failed to account for evidence that the traffic stop of a Black man may have been the result of implicit bias with a potential remedy under the California Racial Justice Act (RJA).

The Appellate Court remanded the case to Judge Shore and instructed him to rehear defendant Tommy Bonds' (Bonds) case under the laws concerning implicit bias as outlined in the RJA.

Police contact is the entry point for the criminal justice system. Consequently, biases held by law enforcement almost certainly cause racially discriminatory decisions about who to investigate (stop, question, search) and how to interpret their behavior, and therefore partially account for disparities in criminal justice outcomes. The RJA prohibits the state from seeking or obtaining a criminal conviction, or from imposing a sentence if a defendant can establish the existence of a bias based on race, ethnicity or national origin that was present in the criminal justice process (AB 2542). The RJA is outlined in California Penal Code section 745 (Code Section). The Code Section addresses the problems associated with both explicit or intentional



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bias and implicit or unintentional bias by providing a tool to identify and implement appropriate remedies in cases that have the presence of this type of bias.

In the *Bonds* case, the Appellate Court found that Judge Shore relied on the representation that Officer Ryan Cameron (Officer Cameron) did not know Bonds' race when he stopped him. The Appellate Court noted that Judge Shore did not account for the possibility of an implicit bias related to race that

stemmed from what Officer Cameron did know at the time. Officer Cameron's knowledge prior to the stop included the location of the stop and Bonds' clothing. The Appellate Court noted that Judge Shore's reasoning and reliance on Officer Cameron's contention that he did not know Bonds' race prior to the traffic stop ignored a fundamental premise of the RJA—that implicit bias can be actionable.

It is important to understand implicit bias to appreciate the unique

nature of the RJA. Implicit bias is the unconscious, unknowing differential treatment of another person based on several discriminatory factors, including but not limited to race, ethnicity, national origin, color, age, sex, gender, disability, and religion. Christine Jolls and Cass R. Sunstein, "The Law of Implicit Bias," *California Law Review* 94, no. 4 (July 2006): 969–996. In recent years the idea that implicit biases among law enforcement contribute to racial

disparities in police stops, searches, frisks, uses of force, and arrests has gained attention, leading to the widespread implementation of implicit bias training in law enforcement agencies. In fact, most police departments train their officers on concepts that include racial bias, community-oriented policing, and cultural competence. In some cases, litigation or legislation requires these trainings. There is a great level of variability in the types and depth of training officers receive. However, there is little empirical evidence to support the effectiveness of these trainings, and they are seldom systematically evaluated. Paluck, E. L., & Green, D. P. (2009). Prejudice Reduction: What works? A Review and Assessment of Research and Practice. *Annual Review of Psychology*, 60, 339–367.

The RJA is groundbreaking in the sense that it has established legislation aimed to root out bias, both explicit and implicit from the justice system. The RJA recognizes that criminal prosecutions and sentences are not always race-neutral and that racial bias in all its forms is intolerable to a fair criminal justice system.

In Bonds' case, according to the Appellate Court, Officer Cameron drove past a car on El Cajon Boulevard in San Diego in January

of 2022, then made a U-turn and pulled the car over. Officer Cameron cited Bonds with a misdemeanor for having a concealed weapon. The gun was legally registered and unloaded in the back of the car, and Bonds told Officer Cameron about it during the stop. At the time of the stop, Bonds asked Officer Cameron whether he pulled him over because he was Black.

Bonds raised a RJA challenge in the lower court. In a hearing on the challenge, Officer Cameron testified that he did not know Bonds' race before he decided to pull him over. However, Officer Cameron did say he saw that Bonds was wearing a hooded sweatshirt with the hood up. Bonds' attorney argued that Bonds' clothing has become "criminalized" depending on who is wearing it.

Superior Court Judge Shore found that Officer Cameron had not shown bias. The Appellate Court noted that Judge Shore's ruling never mentioned implicit bias. The Appellate Court made it clear that the defendant does not have to prove intentional discrimination under the RJA. As such, the Appellate Court determined that the trial court misunderstood the "implicit" element of the RJA. The Appellate Court reasoned that it was not necessary that Officer

Cameron verified that the occupants were Black before he stopped their car, because he may have unconsciously assumed that they were based on their clothing, their presence in the neighborhood, along with other factors.

The research on implicit bias has presented an understanding of the bias that justifies the mandates found in the RJA. Implicit racial bias has been studied at every stage of the criminal justice process, and the possible effects of implicit racial biases on police officers, prosecutors, trial judges, the U.S. Supreme Court, and capital punishment decisions have all been looked at in recent years. (Center for Policing Equity. (2016). *The science of justice: Race, arrests, and police use of force*. Los Angeles, CA: University of California; Correll, J., Park, B., Judd, C. M., & Wittenbrink, B. (2007). The influence of stereotypes on decisions to shoot. *European Journal of Social Psychology*, 37, 1102-1117). The research has demonstrated that racial disparities are found at every stage of the criminal justice process, and that implicit racial bias can appear not only in the discretionary decision making of criminal justice system actors such as law enforcement officers, prosecutors, public defenders, judges, probation, pa-

role, and correctional officers, but also in crime control laws and policies that started with a good intent.

The Appellate Court's ruling in Bonds' case is one of a small number of cases that have tested the RJA. Since the RJA went into effect in 2021, more time will be needed to gauge the impact that it has on racial disparities in the criminal justice process. The outcome of the case could potentially impact future challenges brought under the RJA. Advocates of equality and justice are eager to see how the RJA develops.

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