

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY CASTILLO-  
PULIDO,

Defendant and Appellant.

2d Crim. No. B285721  
(Super. Ct. No. 17CR07342)  
(Santa Barbara County)

Anthony Castillo-Pulido pled guilty to possession of cocaine with a firearm (Health & Saf. Code, § 11370.1) after the superior court affirmed the magistrate's denial of his motion to suppress evidence (Pen. Code,<sup>1</sup> §§ 995, 1538.5, subds. (a)(1)(A), (f) & (i)). He was convicted and placed on formal probation for five years, including 210 days in the county jail. Castillo-Pulido

---

<sup>1</sup> All further undesignated statutory references are to the Penal Code.

contends police lacked reasonable suspicion to detain him. We affirm.

#### FACTUAL AND PROCEDURAL HISTORY

Just before 3:00 p.m. on a Sunday in July, Officer Erik Hesch received a report of a fight behind Santa Maria High School. Six people were reported to be fighting as another 20 watched. Those involved in the fight were teenagers wearing black and white clothing. No information on gang affiliations, if any, or race, was provided. No vehicle descriptions were given, nor was there any indication that vehicles were seen leaving the fight. The Santa Barbara County Fair was in progress at the time, and there was heavy pedestrian and vehicular traffic near the school.

Based on the reported location of the fight, Officer Hesch believed it was gang related. In his experience, the suspects in gang-related fights are often teenagers. No area gang wears black and white clothing, however.

Six officers responded. One checked the west side of the school, and another checked the north. Officer Hesch checked the south, and then proceeded east.

About five minutes after the initial call, Officer Hesch turned north into an alley “a few hundred feet” from school grounds. He saw two vehicles driving south, away from the direction of the school. Although there was no direct route from the location of the reported fight to the alley, Officer Hesch believed the occupants of the vehicles may have been leaving the fight because “not a lot of people really drive down” the alley.

One of the vehicles was a Volkswagen Jetta driven by a male wearing a Seattle Mariners baseball cap, a hat often worn by local gang members. As Officer Hesch drove past the Jetta,

two of its three occupants sat rigidly and stared forward intently. The third looked at the officer, made eye contact, and looked away quickly. All three were “wearing dark- and light-colored clothing” and appeared to be between 16 and 19 years old.

As Officer Hesch turned his patrol car around, the Jetta accelerated out of the alley. Officer Hesch followed the Jetta to a nearby 7-Eleven. He parked behind it and activated his overhead lights. Castillo-Pulido exited the driver’s door of the vehicle, wearing a light-colored plaid shirt with black lines. When he started to run toward the front of the car, Officer Hesch intercepted him. The officer noticed a bulge at the bottom of Castillo-Pulido’s shirt, conducted a patdown, and found a firearm in his waistband. Another officer found cocaine in Castillo-Pulido’s sock.

## DISCUSSION

Castillo-Pulido contends the magistrate erred when denying the motion to suppress because Officer Hesch lacked reasonable suspicion to detain him.<sup>2</sup> We disagree.

---

<sup>2</sup> As part of this contention, Castillo-Pulido faults the magistrate for relying on *People v. Conway* (1994) 25 Cal.App.4th 385 (*Conway*) to deny his motion to suppress. But “we are concerned with the correctness of the ruling, not the [magistrate’s] reasoning. [Citations.]” (*People v. Zichwic* (2001) 94 Cal.App.4th 944, 951.) He also argues that the trial court’s factual basis for upholding the magistrate’s denial of the motion was erroneous. But “[o]n review . . . [we] in effect disregard[] the ruling of the superior court and directly review[] the determination of the magistrate holding the defendant to answer.” (*People v. Laiwa* (1983) 34 Cal.3d 711, 718, superseded by statute on another ground as stated in *People v. Trujillo* (1990) 217 Cal.App.3d 1219, 1223-1224.)

A detention occurs when a law enforcement officer applies physical force to a suspect or exhibits a show of authority to which the suspect yields. (*California v. Hodari D.* (1991) 499 U.S. 621, 625-626 (*Hodari D.*)). The detention must be “based . . . on a ‘reasonable suspicion’ that the suspect has committed . . . a crime. [Citations.]” (*People v. Bennett* (1998) 17 Cal.4th 373, 387.) Reasonable suspicion is a less-demanding standard than probable cause, but still requires “specific, articulable facts that are ‘reasonably “consistent with criminal activity.” [Citation.]” (*People v. Wells* (2006) 38 Cal.4th 1078, 1083; see also *ibid.* [detention predicated on curiosity, rumor, or hunch is unlawful, even if the officer acts in good faith].) Whether reasonable suspicion for a detention exists requires an examination of the totality of the circumstances. (*People v. Souza* (1994) 9 Cal.4th 224, 231 (*Souza*)).

“On appeal from a section 995 review of the denial of a defendant’s motion to suppress, we review the determination of the magistrate at the preliminary hearing. [Citations.]” (*People v. McDonald* (2006) 137 Cal.App.4th 521, 529.) “[W]e defer to [the magistrate’s] factual findings if supported by substantial evidence.” (*People v. Brown* (2015) 61 Cal.4th 968, 975 (*Brown*)). “We independently assess the legal question of whether the challenged [detention] satisfies the Fourth Amendment. [Citation.]” (*Ibid.*)

The totality of the circumstances supports the magistrate’s denial of Castillo-Pulido’s motion to suppress. The detention here began when Officer Hesch intercepted Castillo-Pulido as he ran toward the front of the Jetta. (*Hodari D.*, *supra*, 499 U.S. at p. 626; cf. *Brown*, *supra*, 61 Cal.4th at p. 977 [driver who remained in his parked vehicle was detained when officer

pulled behind him and activated emergency lights].) At that point, Officer Hesch reasonably suspected that Castillo-Pulido had committed a crime. First, the fight and detention occurred in an area known for gang activity. “An area’s reputation for criminal activity is an appropriate consideration in assessing whether an investigative detention is reasonable.” (*Souza, supra*, 9 Cal.4th at p. 240.) Second, Officer Hesch detained Castillo-Pulido within minutes of the report and within blocks of the reported crime scene. A defendant’s spatial and temporal proximity to a reported crime are appropriately considered in the reasonable suspicion determination. (*Brown*, at p. 986; *Conway, supra*, 25 Cal.App.4th at p. 390.) Third, Officer Hesch knew from his experience that few people drove down the alley where he first encountered Castillo-Pulido. The experience of law enforcement is pertinent to the reasonable suspicion determination. (*People v. Hernandez* (2008) 45 Cal.4th 295, 299.)

Fourth, Castillo-Pulido’s age and clothing matched the description of those involved in the fight. A defendant’s similarity to a reported suspect is relevant to determining the reasonableness of a detention. (*People v. Fields* (1984) 159 Cal.App.3d 555, 564.) Fifth, Castillo-Pulido and the other occupants of the Jetta appeared nervous when they drove past Officer Hesch. “[N]ervous, evasive behavior is a pertinent factor in determining reasonable suspicion.” (*Illinois v. Wardlow* (2000) 528 U.S. 119, 124.) Sixth, Castillo-Pulido attempted to run when the officer detained him at the 7-Eleven. “[F]light from police is a proper consideration . . . in determining whether in a particular case the police have sufficient cause to detain.” (*Souza, supra*, 9 Cal.4th at p. 235.)

Considered together, these factors provide the reasonable suspicion necessary for Castillo-Pulido's detention. (See, e.g., *People v. Overten* (1994) 28 Cal.App.4th 1497, 1505 [detention of defendants reasonable where they matched the general description of the suspects and were in close proximity to a reported robbery]; *In re Carlos M.* (1990) 220 Cal.App.3d 372, 382 [defendant matching the description of the suspect coupled with his spatial and temporal proximity to the reported crime gave rise to reasonable suspicion]; *People v. Adams* (1985) 175 Cal.App.3d 855, 861 [reasonable suspicion for detention where defendant matched description of suspect, was in close proximity to reported crime, and appeared nervous to police].)

This case shares similarities with *Brown, supra*, 61 Cal.4th 968 and *Conway, supra*, 25 Cal.App.4th 385. In *Brown*, a caller reported an ongoing fight in the alley behind his house. (*Brown*, at p. 986.) It was after 10:30 p.m. (*Ibid.*) Within three minutes of the call a sheriff's deputy arrived. (*Ibid.*) He saw the defendant—the only person in the alley—driving away from the scene. (*Ibid.*) After the defendant refused to speak with the deputy, the deputy detained him. (*Ibid.*) Our Supreme Court upheld the detention, deeming it “reasonable . . . to suspect the sole occupant of the alley may have been involved in the fight.” (*Id.* at p. 987.)

In *Conway*, a man saw two men leave his garage around 3:00 a.m. (*Conway, supra*, 25 Cal.App.4th at p. 387.) His wife called the police, but did not provide a description of the men and did not say whether they had a car. (*Id.* at pp. 387, 390.) Two minutes later, a sheriff's deputy responded and saw a car leaving the area of the reported burglary. (*Id.* at p. 390.) He saw no one else in the area. (*Ibid.*) The deputy detained the men,

and the Court of Appeal upheld the detention as reasonable under the circumstances. (*Ibid.*)

As in *Brown* and *Conway*, here, there was spatial and temporal proximity of Castillo-Pulido to the alleged crime. And despite the detention here occurring in broad daylight (cf. *Souza, supra*, 9 Cal.4th at p. 241 [time of day a factor to consider in the reasonable suspicion determination]), the case for reasonable suspicion was in other ways greater than in *Brown* and *Conway*: The reported fight occurred in a high-crime area; Officer Hesch had a suspect description and knew that few people drove down the alley where he first saw Castillo-Pulido; and Castillo-Pulido acted evasively and attempted to flee from the officer.

Moreover, both the *Brown* and *Conway* courts rejected the defendants' contentions that their actions were consistent with lawful activity: ““The possibility of an innocent explanation does not deprive [an] officer of the capacity to entertain a reasonable suspicion of criminal conduct.” [Citations.]” (*Brown, supra*, 61 Cal.4th at p. 985.) ““The public rightfully expects a police officer to inquire into such circumstances; indeed the principal function of the investigative stop is to resolve that ambiguity.’ [Citation.]” (*Conway, supra*, 25 Cal.App.4th at p. 390.) Those principles are equally true here.

Castillo-Pulido's reliance on *People v. Hester* (2004) 119 Cal.App.4th 376 (*Hester*) is misplaced. In *Hester*, a police officer assumed that all four occupants of a vehicle were gang members because one individual in the car “was known to him to be an East Side Crip, the cars were driving in East Side Crips territory, and the [car] contained Black males between 15 and 25 years of age.” (*Id.* at p. 388.) The Court of Appeal deemed the assumption unreasonable because “[t]here [were] far too many

other possible explanations that fit these facts to conclude that everyone in the cars was a gang member.” (*Ibid.*) And “[m]ere membership in a criminal street gang, without additional facts supporting an inference of criminal activity, does not permit a detention. [Citation.]” (*Id.* at p. 392, italics omitted.)

Here, too, Officer Hesch assumed that the fight was gang related despite the absence of a report to that effect and no report of gang colors. But in contrast to *Hester*, Officer Hesch was aware of additional facts to support an inference of criminal activity: The fight reportedly occurred in gang territory just a few minutes before the detention, Castillo-Pulido matched the general description of those involved in the fight, and Officer Hesch saw Castillo-Pulido act nervously and attempt to flee. The requisite reasonable suspicion existed here.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

YEGAN, Acting P. J.

PERREN, J.



John F. McGregor, Judge

Superior Court County of Santa Barbara

---

Richard L. Fitzer, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler,  
Chief Assistant Attorney General, Lance E. Winters, Senior  
Assistant Attorney General, Noah P. Hill and Abtin Amir,  
Deputy Attorneys General, for Plaintiff and Respondent.