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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re CHARLES P., a Person Coming Under
the Juvenile Court Law.

B245689

THE PEOPLE,

(Los Angeles County
Super. Ct. No. TJ17489)

Plaintiff and Respondent,

v.

CHARLES P.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County,
Kevin L. Brown, Judge. Affirmed.

Holly Jackson, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr. and Nima
Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Charles P., a minor, appeals from the order continuing wardship (Welf. & Inst. Code, § 602) entered following a determination he committed receiving stolen property (Pen. Code, § 496d, subd. (a)). The court ordered appellant placed in camp for a maximum theoretical period of confinement of six years eight months. We affirm the order continuing wardship.

FACTUAL SUMMARY

1. People's Evidence.

Los Angeles County Sheriff's Deputy Sal Stewart testified as follows at appellant's adjudication. About 3:00 a.m. on June 7, 2012, Stewart was on patrol in Lynwood and driving southbound on Long Beach near Orchard. Stewart's patrol car was behind a car appellant was driving. Stewart saw appellant drive the car into the Long Beach Plaza parking lot. Appellant parked the car, exited, and began walking northbound on the sidewalk.

Stewart testified he made a U-turn and "initiated consensual contact" with appellant. Stewart drove next to appellant and asked to speak to him. Stewart asked appellant where he lived and where he was going. Appellant replied he lived on Pine and was heading to his house. Stewart asked why appellant had "parked his car so far." Appellant denied the car was his. Stewart asked to whom the car belonged. Appellant denied knowing from whom he had obtained the car. Based on that statement, Stewart detained appellant. Stewart searched appellant but did not find a pocket knife.

Stewart later saw the area around the car's ignition had been altered and the blade of an open pocket knife had been inserted into the car's ignition. The above and additional evidence established appellant, when driving the car, was committing the offense of receiving stolen property, and there is no dispute as to the sufficiency of the evidence he committed that offense.

2. Defense Evidence.

In defense, appellant testified as follows. Appellant was never in the car and told Stewart that appellant knew nothing about it. Appellant was walking on the sidewalk

when Stewart stopped appellant and began asking him questions. Appellant told Stewart that appellant had left one friend's house and was en route to the house of a second friend. The second friend lived on Pine. Appellant had known each friend for about two years but did not know either friend's last name. Stewart searched appellant and found the knife in appellant's pocket. A second deputy arrived and told Stewart the deputies would say appellant started the car's ignition with the knife. Appellant was on probation but did not know for what offense he was on probation.

ISSUE

Appellant claims his statements to Stewart, and any evidence recovered during any later consensual search of appellant's person, should have been suppressed as the products of an unlawful detention.

DISCUSSION

Appellant Waived the Issue of the Legality of Any Detention of Appellant.

Appellant claims as previously indicated. We conclude his claim is unavailing. Welfare and Institutions Code section 700.1 is the sole statutory basis for search and seizure suppression motions in juvenile court. (*In re Michael V.* (1986) 178 Cal.App.3d 159, 164.) "A [Welfare and Institutions Code] section 700.1 proceeding, the juvenile court counterpart to the adult Penal Code section 1538.5 motion, is distinct and separate from the trial phase of a juvenile case having a different purpose with a different burden of proof [citation] established to efficiently dispose of questions involving suppression of evidence *before trial* with only one appellate review." (*In re Steven H.* (1982) 130 Cal.App.3d 449, 453, italics added.)

There is no dispute the law concerning Penal Code section 1538.5 motions properly may inform our analysis. "[A] motion to test the validity of a search or seizure must be raised in the superior court to preserve the point for review on appeal." (*People v. Miranda* (1987) 44 Cal.3d 57, 80; Pen. Code, § 1538.5, subd. (m).)

Appellant made no Welfare and Institutions Code section 700.1 motion; therefore, in light of the above authorities, he waived the issue of the legality of any detention of

appellant. The fact some of Stewart's adjudication testimony might have been relevant at a suppression hearing if appellant had filed a section 700.1 suppression motion does not compel a contrary conclusion.

Appellant alternatively claims he was denied effective assistance of counsel by his trial counsel's failure to file such a suppression motion. In support of his claim, appellant relies on the record on appeal, in particular, adjudication evidence, to argue he was unlawfully detained. We reject appellant's claim. The evidence upon which appellant relies was not presented at a suppression hearing. " 'Because the legality of the search was never challenged or litigated, facts necessary to a determination of that issue are lacking.' [Citation.]" (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266 (*Mendoza Tello*)). The issue at the adjudication, as pertinent here, was whether appellant had received stolen property, not whether Stewart acted unlawfully under the Fourth Amendment by detaining appellant. (Cf. *ibid.*)

In the present case, the record on appeal sheds no light on why appellant's trial counsel failed to file a suppression motion, the record fails to reflect counsel was asked for an explanation, and we cannot say on this record there simply could have been no satisfactory explanation for the failure. Accordingly, we must reject appellant's claim for these reasons alone. (Cf. *Mendoza Tello, supra*, 15 Cal.4th at pp. 266-268.)

Moreover, to the extent appellant relies on the record on appeal to support his claim, we, relying on that record, can conceive of satisfactory explanations for appellant's counsel's failure to file a suppression motion.

First, the record includes the adjudication evidence, and that evidence provides a reason why appellant's counsel may not have filed a suppression motion. A person is detained, and therefore "seized" within the meaning of the Fourth Amendment, only when the person is physically restrained or voluntarily submits to a peace officer's show of authority. (*People v. Johnson* (1991) 231 Cal.App.3d 1, 10-11 (*Johnson*); *People v. Arangure* (1991) 230 Cal.App.3d 1302, 1307 (*Arangure*)). The requisite show of

authority exists when a reasonable person would believe the person was not free to leave. (*Johnson*, at pp. 10-11; *Arangure*, at pp. 1305-1308.)

A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts which, considered in light of the totality of the circumstances, provide an objective manifestation the person detained may be involved in criminal activity. (*People v. Souza* (1994) 9 Cal.4th 224, 231.)

Based on the People's adjudication evidence, appellant's trial counsel reasonably could have concluded Stewart could have pointed to the following as the required specific articulable facts. It was unusual, without further explanation by appellant, for him to indicate he had parked a car in a shopping center parking lot in order to go home when his home on Pine was so far from the car. If the car were appellant's, Stewart reasonably could have expected appellant to park it near his home.

However, later during Stewart's conversation with appellant, appellant denied the car was his. This denial, without further explanation by appellant, raised the issue of whether he had been driving the car without permission. Appellant then denied knowing from whom he had obtained the car. This denial without further explanation was unbelievable and, in light of the previous facts, caused Stewart to believe appellant drove the car without permission, parked the car in the parking lot, and falsely told Stewart that appellant had parked it there because appellant was heading home. Stewart detained appellant only after appellant made the above statements to Stewart.

Thus, based on the People's adjudication evidence, appellant's trial counsel reasonably could have concluded Stewart could point to specific articulable facts which, considered in light of the totality of the circumstances, provided an objective manifestation appellant might have been involved in criminal activity (see Veh. Code, §§ 10851, subd. (a), 10852; Pen. Code, § 487, subd. (d)(1)). Moreover, appellant's trial counsel reasonably could have concluded much of appellant's adjudication testimony, whether considered by itself or in combination with the People's evidence, was fabricated.

Accordingly, to the extent appellant relies on the adjudication evidence to support his ineffective assistance claim, that evidence alone provides a reasonable explanation why appellant's trial counsel failed to file a suppression motion. Appellant's trial counsel reasonably could have concluded appellant would not have prevailed on a suppression motion because a trial court (1) would have concluded based on Stewart's testimony any detention of appellant was lawful and (2) would have rejected appellant's testimony as fabricated.

Second, the record on appeal contains not only the adjudication evidence but information about appellant's past offenses. Appellant's adjudication in this case occurred in October 2012. However, a detention report dated June 8, 2012 and filed on June 11, 2012 in connection with the present offense reflects appellant previously had committed the offenses of taking a vehicle without the owner's consent, burglary, and vandalism, i.e., crimes of moral turpitude. (*People v. Lang* (1989) 49 Cal.3d 991, 1011; *People v. Campbell* (1994) 23 Cal.App.4th 1488, 1491-1493; *People v. Rodriguez* (1986) 177 Cal.App.3d 174, 178.) The record also reflects on September 26, 2012, the trial court sustained a petition alleging that in March 2012, appellant committed forgery (Pen. Code, § 470, subd. (a)) and petty theft (Pen. Code, § 484, subd. (a)), i.e., crimes of moral turpitude. (Cf. *People v. Cadogan* (2009) 173 Cal.App.4th 1502, 1514; *People v. Waldecker* (1987) 195 Cal.App.3d 1152, 1156.)

Accordingly, the record on appeal provides another reasonable explanation why appellant's trial counsel failed to file a suppression motion. Appellant's trial counsel reasonably could have concluded such a motion would have devolved into a credibility contest between Stewart and appellant in which any hearsay statements appellant made to Stewart, and any testimony by appellant, could have been impeached by one or more of appellant's past offenses. (See *People v. Wheeler* (1992) 4 Cal.4th 284, 290-295; *People v. Lee* (1994) 28 Cal.App.4th 1724, 1739-1740; Evid. Code, § 1202.)

Appellant's trial counsel did not provide ineffective assistance of counsel by failing to file a Welfare and Institutions Code section 700.1 suppression motion challenging the lawfulness of (1) any detention of appellant and/or (2) any search of appellant's person as a product of an unlawful detention, because appellant's trial counsel was not required to file a futile suppression motion. (Cf. *People v. Solomon* (2010) 49 Cal.4th 792, 843, fn. 24.) We express no opinion as to whether any detention and/or search in this case was lawful under the Fourth Amendment.

DISPOSITION

The order continuing wardship is affirmed.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.