Filed 11/29/12 P. v. Landaverde CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON ARMANDO LANDAVERDE,

Defendant and Appellant.

2d Crim. No. B239561
(Super. Ct. No. 2011033961)
(Ventura County)

Jason Armando Landaverde appeals his conviction by plea to possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), entered after the trial court denied his motion to suppress evidence (Pen. Code, § 1538.5)[1] and granted appellant Proposition 36 probation (§ 1210.1). We affirm.

Facts

On September 22, 2011, at about 2 o'clock in the morning, Oxnard Police Department Public Safety Dispatcher Christina Tostado received an anonymous call that a Hispanic male in his twenties was "looking into vehicles, possibly casing for a 459" on Longfellow Way near Pleasant Valley Road The caller said the suspect was on foot, wearing a black hooded sweatshirt and black pants. A police dispatcher radioed the information to officers in the field.

[1] All further statutory references are to the Penal Code .

Officer Robert Flinn responded to the call and saw appellant standing in an open grass area between two apartment complexes, near some cars. Appellant wore a hooded, gray pull-over sweatshirt and dark colored sweatpants.

Officer Flinn called out to appellant, who was 50 to 60 feet away, to stop. Appellant immediately turned, began to walk away, and yelled that he was not on probation.

Appellant looked like he was about to run. Officer Pedro Martinez ran up and applied a control hold to keep appellant from leaving. Appellant said that he had a BB gun in his waistband and consented to a patdown search. Appellant appeared to be under the influence of a narcotic, was very nervous, had dilated pupils and a pronounced neck pulse, and kept smacking his mouth and had white residue around his lips.

Officer Martinez placed appellant in handcuffs for officer safety purposes and removed the BB gun from his waistband. Methamphetamine, a glass smoking pipe, and a lighter were found on appellant's person during the patdown.

Terry Stop

On appeal, we defer to the trial court's factual findings which are supported by substantial evidence and independently determine whether, on the facts so found, the detention and patdown were reasonable under the Fourth Amendment. (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) It is settled that an officer may stop and frisk a suspect based on a reasonable suspicion the suspect has committed or is about to commit a crime. (*Terry v. Ohio* (1967) 392 US. 1, 30 [20 L.Ed.2d 889, 908-909]; see *People v. Bennett* (1998) 17 Cal.4th 373, 386-387.) " 'Reasonable suspicion is a lesser standard than probable cause, and can arise from less reliable information than required for probable cause, including an anonymous tip.' [Citation.]" (*People v. Dolly* (2007) 40 Cal.4th 458, 463.)

Florida v. J.L.

Appellant argues that an anonymous phone tip, standing alone, does not justify a *Terry* stop. In *Florida v. J.L.* (2000) 529 U.S. 266 [146 L.Ed.2d 254], the police received an anonymous phone tip that a young African-American in a plaid shirt was at a bus stop with a concealed weapon. The Supreme Court concluded that the tip was insufficient to detain the suspect and conduct a patdown search absent independent

corroboration. "All the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how or why he knew about the gun nor supplied any basis he had inside information about J.L." (*Id*., at p. 271 [146 L.Ed.2d at pp. 260-261].) The court acknowledged that exigent circumstances, such as a tip that someone was carrying a bomb, could justify a stop and patdown search even without a showing of reliability. (*Id*., at pp. 273-274 [146 L.Ed.2d at pp. 261-262].)

Here the anonymous tip was corroborated by Officer Flinn's observations within minutes of the call. Appellant fit the suspect's description: a male Hispanic in his twenties, lurking around an apartment complex, dressed in dark clothing. (See *People v. Dolly*, *supra*, 40 Cal.4th at p. 457 [general suspect description sufficient to justify stop and questioning of persons meeting that description]; *People v. Craig* (1978) 86 Cal.App.3d 905, 911 [same].) It was a high crime burglary area, it was 2:00 in the morning, and appellant was the only person near the cars. The caller said the suspect was "looking into vehicles, possibly casing for a [burglary]."

When Officer Flinn approached, appellant immediately turned and looked like he was about to flee. " '[F]light from police is a proper consideration – and indeed can be a key factor – in determining whether in a particular case the police have sufficient cause to detain.' [Citation.] The determination of reasonable suspicion is based on commonsense judgments and inferences about human behavior. [Citation.] 'Headlong flight – wherever it occurs – is the consummate act of evasion; it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such.' [Citation.]" (*People v. Rodriguez* (2012) 207 Cal.App.4th 1540, 1544.)

Appellant argues that Officer Flinn saw nothing to support the caller's tip that a man was looking in cars. But Officer Flinn's observations within minutes of the call and appellant's evasive conduct was enough to conduct a brief investigatory stop. *Terry* does not require a foot race before an officer can form the reasonable suspicion that "criminal activity may be afoot." (*Terry v. Ohio, supra,* 392 U.S. at p. 30 [20 L.Ed.2d at p. 911].)

In determining whether a reasonable suspicion existed, reviewing courts "look at the 'totality of the circumstances' of each case to see whether the detaining officer has a

'particularized and objective basis' for suspecting legal wrongdoing. [Citation.] This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well allude an untrained person.' [Citation.]" (*United States v. Arvizu* (2002) 534 U.S. 266, 273 [151 L.Ed.2d 740, 749-750].) It is not the function of judges "to second-guess on-the-spot decisions of officers in the field under these circumstances." (*People v. Wilson* (1997) 59 Cal.App.4th 1053, 1063; see *Tamborino v. Superior Court* (1986) 41 Cal.3d 919, 925.)

Officer Flinn had 22 years field experience. Based on the police dispatch, the time of day, the high crime burglary area, and appellant's attire and suspicious conduct, Officer Flinn reasonably believed that an investigatory stop was justified. "The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the principal function of [police] investigations is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal . . . ." (*In re Tony C.* (1978) 21 Cal.3d 888, 894.)

Appellant argues there was no exigent circumstance such as a phone tip that he was carrying a gun or a bomb.[2] Unlike *Florida v. J.L.*, *supra*, 529 U.S. 266, the caller provided a contemporaneous report that a young man was lurking around an apartment area, possibly casing a burglary. The female caller described the suspect's age, sex, ethnicity, clothing, and specific location, all of which was verified by Officer Flinn a few minutes after the call. The caller's report was fresh, detailed, and accurate, and supported the inference that the caller was observing what has happening from her apartment. Appellant was " '[l]urking in the dark by residences in the wee hours of the morning [which] is unusual

---

[2] The Supreme Court in *Florida v. J.L.*, *supra*, 529 U.S. at p. 272 [146 L.Ed.2d at p. 261]) rejected a similar argument because it would create an "automatic firearm [or bomb] exception" to the Fourth Amendment. "Such an exception would enable any person seeking to harass another to set in motion an intrusive, embarrassing police search of the target person simply by placing an anonymous call falsely reporting the targets unlawful carriage of a gun. Nor could one securely confine such an exception to allegations involving firearms [or bombs] [¶] . . . because 'the reasons for creating an exception in one category [of Fourth Amendment cases] can, relatively easily be applied to others,' thus allowing the exception to swallow the rule." (*Id*., at p.p. 272-273 [146 L.Ed.2d at pp. 261-262].)

for law-abiding persons' [citation], and 'the officer[s] had reasonable suspicion that appellant was loitering and prowling' [citation]." (*People v. Huggins* (2006) 38 Cal.4th 175, 242.)

Conclusion

Based on the totality of the circumstances, we conclude that Officer Flinn, relying upon specific and articulable facts, had a sufficient basis for entertaining a reasonable suspicion of criminal activity to detain appellant. In the words of the trial court: "Was it reasonable for law enforcement to go to that neighborhood given that they received a call at [2]:00 in the morning? Sure. Sure. Go look, Go check it out."

Appellant was temporarily detained, said he had a BB gun in his waistband, and consented to a patdown search. The trial court did not err in denying the motion to suppress evidence. "If law enforcement could not rely on information conveyed by anonymous 911 callers, their ability to respond effectively to emergency situations would be significantly curtailed.' [Citations.]" (*People v. Dolly, supra,* 40 Cal.4th at p. 467.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Donald Coleman, Judge

Superior Court County of Los Angeles

Stephen P. Lipson, Public Defender, Michael C. McMahon, Chief Deputy and Cynthia Ellington, Senior Public Defender, for Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, , Supervising Deputy Attorney General, Stephanie A. Miyoshi, Viet H. Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.