Filed 11/21/19 In re J.C. 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

In re J.C., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B294127 (Super. Ct. No. PJ52725) (Los Angeles County)
THE PEOPLE, Plaintiff and Respondent, v. J.C., Defendant and Appellant.	

J.C. appeals orders of the juvenile court sustaining a Welfare and Institutions Code section 602 petition, with a finding that he carried a concealed firearm (Pen. Code, § 25400, subd. (a)(2)), following the denial of his motion to suppress evidence and his admission that he violated that Penal Code section. J.C. was declared a ward of the court and was placed at home on probation. We conclude, among other things, that the juvenile court did not err by denying the suppression motion. We affirm.

FACTS

The police arrested J.C. for possession of a concealed firearm after conducting a patdown search. The gun was located near his waistband. J.C. moved to suppress evidence of the gun, claiming the search violated his Fourth Amendment rights.

Police Officer Jorge Morales testified at the hearing on the suppression motion. He said on July 7, 2018, he and his partner were in an "unmarked" vehicle near Lanark Park. Morales knew "that area to be a gang area" based on his work "as a Metro officer" and his conversations "with gang officers at that division." He said "that park is known to be a stronghold" for the Canoga Park Alabama gang.

The juvenile court overruled J.C.'s counsel's objections that Morales was "not qualified as a gang expert" and his testimony "lacks foundation."

Morales testified he "had previous cases involving individuals from Canoga Park Alabama." He was "familiar" with the gang's "monikers, symbols and abbreviations." He was not familiar with their "colors," but he knew their "symbols," such as "C" to represent "the name of the gang, Canoga Park Alabama," and "A" for "the Alabama portion of that gang's name."

At 7:10 p.m., Morales and his partner saw J.C. and E.M walking out of an apartment complex. They were "dressed down" with an "over-size baggy shirt, baggy shorts." E.M. was "a documented gang member" from Canoga Park Alabama. Morales said he knew that from a previous "contact" he had with him. J.C. was wearing a black hat with the letter "C" on it.

J.C. and E.M. "looked in" the direction of the officers. Morales made "eye contact with [J.C.]." J.C. moved his right

hand "to his waistband," like "he was adjusting something." Morales got out of his vehicle.

Morales testified he decided to approach them, "based on the totality of the circumstances," including: (1) "knowing that that area is a gang area"; (2) "knowing that Lanark Park is a stronghold for the Canoga Park Alabama gang"; (3) "having prior experience and made an arrest in the rear alley of where that apartment complex was with another documented gang member"; (4) J.C. and E.M. were "wearing baggy clothes"; (5) "[J.C.] was wearing a black hat that had the letter "C" on it . . . representing possibly the Canoga Park Alabama gang"; and (6) "[J.C.] was with a known documented Canoga Park Alabama gang member." Given these factors, Morales "had reasonable suspicion to believe that [J.C.] may have some kind of weapon at his waistband that he was adjusting."

Morales approached J.C. and E.M. They were "next to each other." He testified that, as he came closer, "[E,M.] came straight at me trying to, I guess, block my vision of [J.C.]." As Morales began talking to them, J.C. "crossed his arms and began to look left and right." He avoided "eye contact" with Morales.

On cross-examination, Morales testified this was "a high crime neighborhood." He was asked, "T-shirt and shorts, those are casual clothing, right?" Morales responded, "I can agree that is casual clothing." J.C. wore a black T-shirt; E.M. wore a light gray T-shirt. Both wore baseball caps. E.M. wore his "backward"; J.C. wore his "forward."

The juvenile court denied the suppression motion. It said, "Based upon what Officer Morales saw, all the things he saw, great detail, where he was, . . . the court finds there is no violation of either the state or federal constitution." J.C.

subsequently admitted the allegation of the Welfare and Institutions Code section 602 petition that he violated Penal Code section 25400, subdivision (a)(2) by "having a concealed firearm on [his] person." The court sustained the petition and ordered J.C. to be "placed home on probation."

DISCUSSION

The Suppression Motion

J.C. contends the juvenile court erred by denying his suppression motion because "the officer did not have an objectively reasonable suspicion for an investigative stop or detention." We disagree.

"On review of the trial court's denial of a suppression motion, we defer to the trial court's express or implied factual findings if supported by substantial evidence, but exercise our independent judgment to determine whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment." (*In re H.M.* (2008) 167 Cal.App.4th 136, 142.)

The Fourth Amendment prohibits unreasonable searches and seizures by law enforcement. (U.S. Const., 4th Amend; *Terry v. Ohio* (1968) 392 U.S. 1, 8-9; *In re H.M.*, *supra*, 167 Cal.App.4th at p. 142.) "When an officer reasonably suspects that an individual whose suspicious behavior he or she is investigating is armed and dangerous to the officer or others, he or she may perform a patsearch for weapons." (*H.M.*, at p. 143.) "Such a limited frisk for weapons is justified where the 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.' " (*Ibid.*) " '[T]he 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.' " (*Ibid.*)

A person's presence "in an area of expected criminal activity, *standing alone*, is not enough to support a reasonable, particularized suspicion that the person is committing a crime." (*Illinois v. Wardlow* (2000) 528 U.S. 119, 124, italics added.) But "[a]n area's reputation for criminal activity" is a factor that may be considered with others "in assessing whether an investigative detention is reasonable under the Fourth Amendment." (*People v. Souza* (1994) 9 Cal.4th 224, 240.) A suspect's "nervous, evasive behavior" is also "a pertinent factor in determining reasonable suspicion." (*Wardlow*, at p. 124.) Some types of evasive action upon seeing a police officer may indicate a "consciousness of guilt." (*Souza*, at p. 235; *People v. Farnam* (2002) 28 Cal.4th 107, 154.)

J.C. contends Morales saw him "appear to adjust his waistband," but this did not provide Morales "reasonable suspicion to believe he might have a weapon." He notes that " 'the law requires more than a mere "furtive gesture" to constitute probable cause to search . . . .' " (*In re Frank V.* (1991) 233 Cal.App.3d 1232, 1240.)

A suspect's hand movement may be "susceptible of an innocent explanation," but that does not preclude an officer from entertaining a reasonable suspicion consistent with the Fourth Amendment. (*Illinois v. Wardlow*, *supra*, 528 U.S. at p. 125; *United States v. Sokolow* (1989) 490 U.S. 1, 9-10; *In re Tony C.* (1978) 21 Cal.3d 888, 894.) "Conduct that may be wholly innocent may nonetheless support a finding of reasonable suspicion in certain circumstances." (*United States v. Johnson* (10th Cir. 2004) 364 F.3d 1185, 1192.) Consequently, a normally

innocent hand movement to a pocket may, when coupled with sufficient additional facts, become an " 'additional factor' justifying a patdown search for weapons." (*In re Frank V.*, *supra*, 233 Cal.App.3d at p. 1241.)

Morales testified he believed J.C. may have had "some kind of weapon at his waistband that he was adjusting." A defendant's hand movement to the waistband is a relevant factor, and, when coupled with other sufficient facts known to the officer, it may support the validity of a patdown search. (*People v. Lindsey* (2007) 148 Cal.App.4th 1390, 1400; *People v. Superior Court (Brown)* (1980) 111 Cal.App.3d 948, 955-956; *United States v. Briggs* (10th Cir. 2013) 720 F.3d 1281, 1288, fn. 4 [grabbing the waistband may be a relevant fact in deciding whether the officer had a reasonable suspicion]; see also *United States v. Oglesby* (7th Cir. 2010) 597 F.3d 891, 895; *United States v. Dubose* (1st Cir. 2009) 579 F.3d 117, 122; *United States v. Padilla* (2d Cir. 2008) 548 F.3d 179, 189; *United States v. Price* (D.C. Cir. 2005) 409 F.3d 436, 442; *United States v. Marrero* (8th Cir. 1998) 152 F.3d 1030, 1033; and *Salazar-Limon v. City of Houston, Texas* (5th Cir. 2016) 826 F.3d 272, cert. den. (2017) _ U.S. _ [137 S.Ct. 1277, 1281, 197 L.Ed.2d 761].) In some circumstances, an officer may have a special concern when seeing a suspect move a hand to a waistband as opposed to a pocket. "Common sense suggests that pockets are often used to carry all manner of items. The same cannot be said of a person's waistline." (*Briggs*, at p. 1288, fn. 4.) "We can hardly ignore what is apparent to probably every police officer, that a handgun is often carried in the waistband." (*People v. Montague* (N.Y. App.Div. 1991) 175 A.D.2d 54, 55.)

Here there were additional facts to support Morales's decision to conduct a patdown. Morales testified the area was "a

high-crime neighborhood." He was assigned to that area "due to recent criminal activity." He knew the location "to be a gang area" and "a stronghold for the Canoga Park Alabama gang." These were relevant facts. (*People v. Souza*, *supra*, 9 Cal.4th at p. 240.) J.C. and E.M. were "dressed down" with "over-size baggy" shirts and "baggy shorts." The police do not have "carte blanche to pat down anyone wearing baggy clothing," but the wearing of "baggy clothing, coupled with other suspicious circumstances" are factors that may be considered. (*People v. Collier* (2008) 166 Cal.App.4th 1374, 1377, fn. 1.)

Morales recognized the person with J.C. as E.M. "from a prior contact." (*United States v. Feliciano* (7th Cir. 1995) 45 F.3d 1070, 1074 [knowledge of gang association].) E.M. was "a documented gang member from Canoga Park Alabama." J.C. wore a black hat with "the letter 'C' on it," representing "possibly the Canoga Park Alabama gang."

"[A]lthough gang affiliation is 'not necessarily determinative by itself, . . . gang connection further supports the reasonableness of [an officer's suspicion].' " (*United States v. Guardado* (10th Cir. 2012) 699 F.3d 1220, 1224.) In *Guardado*, the court said, "It is true that the officers did not know whether Mr. Guardado was a gang member or if he was engaged in tagging, but *Terry* [*v. Ohio*] demands suspicion not certainty. Reasonable suspicion requires only a 'minimal level of objective justification' to support the belief that criminal activity is afoot." (*Ibid.*; see also *United States v. Sokolow*, *supra*, 490 U.S. at p. 7.) Here Morales knew E.M. was a gang member.

When Morales approached in his vehicle, J.C. and E.M. looked in the direction of the officers. Morales made "eye contact" with J.C. J.C., using his "right hand, went to his waistband" and

"looked like he was adjusting something." When Morales got out of his vehicle and approached them, E.M. "came straight at" Morales. Morales thought E.M. may have tried to "block" his view of J.C. He could reasonably believe this was suspicious behavior. (*Illinois v. Wardlow*, *supra*, 528 U.S. at p. 124; *People v. Superior Court (Brown)*, *supra*, 111 Cal.App.3d at pp. 955-956; *United States v. Briggs*, *supra*, 720 F.3d at p. 1288, fn. 4 [grabbing the waistband].)

J.C. "crossed his arms and began to look left and right." He was avoiding eye contact with Morales (*United States v. George* (4th Cir. 2013) 732 F.3d 296, 301 ["[W]hile the failure of a suspect to make eye contact, standing alone, is an ambiguous indicator, . . . the evidence may still contribute to a finding of reasonable suspicion"]; *United States v. Andrade* (1st Cir. 2008) 551 F.3d 103, 113 [refusal "to make eye contact" was a relevant factor].) Morales believed J.C. may have had a weapon in his waistband. "The officer need not be absolutely certain that the individual is armed." (*Terry v. Ohio*, *supra*, 392 U.S. at p. 27.) During the patdown, the gun was seized in the "same location" where Morales saw J.C. adjusting his waistband.

J.C. claims there are possible innocent explanations for factors Morales believed to be significant. J.C. notes Morales testified he was wearing "casual clothing." J.C. contends the letter "C" could represent "the first letter of the minor's surname." But there is no evidence in this record that "C" stood for J.C.'s surname, and the issue is what was objectively reasonable. But even if there were some alternative explanations, that "does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the

principal function of his investigation is to resolve that very ambiguity . . . ." (*In re Tony C.*, *supra*, 21 Cal.3d at p. 894.)

The People contend Morales acted consistent with the Fourth Amendment based on the factors he relied on. They argue key factors included: "[J.C.'s] adjustment . . . of his waistband after seeing the police officers"; "[J.C.'s] gang-member companion"; "the companion's attempt to block the officers view of [J.C.]"; J.C.'s and E.M.'s behavior and the area's reputation for criminal activity. We agree. Given the totality of the circumstances (*United States v. Arvizu* (2002) 534 U.S. 266, 273-274), Morales's actions were objectively reasonable and the juvenile court did not err in denying the suppression motion. (*Terry v. Ohio*, *supra*, 392 U.S. at pp. 21, 27; *People v. Souza*, *supra*, 9 Cal.4th at pp. 239-240; *In re H.M.*, *supra*, 167 Cal.App.4th at p. 148 [defendant's behavior "strongly suggested criminal activity was afoot, leading an experienced officer to conclude [he] might well be armed"]; *United States v. Briggs*, *supra*, 720 F.3d at p. 1288, fn. 4.) Morales had a reasonable basis to be concerned about his safety. "Officers in an area plagued by violent gang activity need not ignore the reality that persons who commit crimes there are likely to be armed." (*H.M.*, at p. 146.) "The Fourth Amendment has never been interpreted to " ' "require that police officers take unnecessary risks in the performance of their duties." ' " (*People v. Collier*, *supra*, 166 Cal.App.4th at p. 1378.) There was no error.

Qualifications for Expert Testimony

J.C. contends the juvenile court erred in admitting Morales's testimony about a neighborhood gang without the necessary foundation and without qualifying the witness as a gang expert. He claims "all of Morales's testimony relating to the

Canoga Park Alabama gang was wrongfully admitted" without such foundational evidence.

The People claim "no such foundation was required because Officer Morales's testimony was based on his personal observations as a police officer and the prosecutor did not call or qualify him as a gang expert." We agree. The People did not call Morales as a gang expert. But that does not mean his testimony about the gang-related facts he mentioned was inadmissible for the suppression hearing.

In *Wimberly v. Superior Court* (1976) 16 Cal.3d 557, 565, our Supreme Court rejected a defense claim that a police officer's testimony about a search involving marijuana was inadmissible because the officer was not an expert in identifying marijuana. The court said, "It is fundamental that an officer's observations can give rise to probable cause only if that officer had sufficient training and experience from which to draw the conclusions necessary to create a reasonable belief in the presence of contraband." (*Ibid.*) "*It is not necessary, however, that the officer qualify as an expert to be able to form the reasonable belief necessary to justify his actions*." (*Ibid*., italics added.) The issue is whether the officer "had enough experience to formulate a reasonable suspicion." (*Ibid.*)

"[A] police officer may *draw inferences based on his own experience* in deciding whether probable cause exists." (*Ornelas v. United States* (1996) 517 U.S. 690, 700, italics added; *United States v. Ortiz* (1975) 422 U.S. 891, 897 ["officers are entitled to draw reasonable inferences" based on "their knowledge of the area and their prior experience"]; *Terry v. Ohio*, *supra*, 392 U.S. at p. 30 ["officer observes unusual conduct which leads him reasonably to *conclude in light of his experience* that criminal

activity may be afoot" (italics added)].) *United States v. Tinnie* (7th Cir. 2011) 629 F.3d 749, 751 [the court considers "circumstances known to the officer" who took the action]; *Matoumba v. State* (Md. Ct.App. 2006) 890 A.2d 288, 291 [*Terry v. Ohio* cannot " 'be remotely construed to mandate that a police officer be qualified as an expert in order to render an opinion on his or her basis for reasonable articulable suspicion to conduct a pat-down' "]; *Brown v. State* (Md. Ct.SpecialApp. 2006) 896 A.2d 1093, 1099 ["It is for the law enforcement officer who conducted the stop and frisk to explain why he or she decided to do so"].)

Consequently, Morales could testify as a lay witness about his reasonable beliefs based on his experience as a police officer and to explain his actions at a suppression hearing. (*Ornelas v. United States*, *supra*, 517 U.S. at p. 700*; United States v. Ortiz*, *supra*, 422 U.S. at p. 897; *Wimberly v. Superior Court*, *supra*, 16 Cal.3d at p. 565.) He could draw lay opinions "rationally based on" his "perception" (*People v. Farnam*, *supra*, 28 Cal.4th at p. 153), or based on incidents he observed and arrests or contacts he made. (*Ortiz*, at p. 897; *Wimberly*, at p. 565.)

The admission of lay opinion evidence by trial courts has been upheld in a wide variety of cases. (*People v. Becerrada* (2017) 2 Cal.5th 1009, 1032 [officer as a lay witness may render an opinion falling "within" the officer's "experience"]; *People v. Hinton* (2006) 37 Cal.4th 839, 889 [lay opinion that defendant was directing a drug transaction]; *People v. Gurule* (2002) 28 Cal.4th 557, 621 [police officer's lay opinion on whether a person exhibited delusional or hallucinatory conduct]; *People v. McAlpin* (1991) 53 Cal.3d 1289, 1309 [lay opinion on whether "defendant is not a person given to lewd conduct with children"]; *People v. Medina* (1990) 51 Cal.3d 870, 887 [officer's lay opinion on

whether defendant could understand questions]; *People v. Williams* (1988) 44 Cal.3d 883, 915 [correctional officer's testimony that defendant was not "strung out"]; *People v. Ghent* (1987) 43 Cal.3d 739, 752 [officer's lay testimony on defendant's mental state]; *People v. Maglaya* (2003) 112 Cal.App.4th 1604, 1609 [police officer's opinion on shoeprint evidence was "within the competence" of the officer testifying as a lay witness].) The admission of such evidence falls within the sound discretion of the trial court. (*People v. Farnam*, *supra*, 28 Cal.4th at pp. 153-154.)

The trial court could reasonably infer Morales had obtained relevant knowledge about the gang and the location from his personal experience. (*Ornelas v. United States*, *supra*, 517 U.S. at p. 700; *Wimberly v. Superior Court*, *supra*, 16 Cal.3d at p. 565.) Morales testified he knew this was a gang area because of his work "as a Metro officer in that division." He had been a police officer for nine and a half years. He was currently in the metro division and had worked there for three years. He was assigned to areas where there was "recent criminal activity or crimes that spike in that particular division." "So we are called upon to come to that division to help and assist and patrol." He knew this location because he had made a prior arrest in the alley of the apartment complex where J.C. and E.M. were walking from. He had "previous cases involving individuals from [the] Canoga Park Alabama [gang]." He testified he was "familiar" with their gang "symbols." Morales knew E.M. and that "he was a documented gang member" from the Canoga Park Alabama gang because of his "prior contacts" with E.M. The juvenile court could reasonably infer Morales had personal knowledge about E.M. and he obtained other information from his experience as a police

officer. Morales testified, "[H]aving worked as a Metro officer in that division before and having spoken with gang officers at that division, I know that area to be a gang area . . . ."

Morales had sufficient experience to support his gang related testimony at a suppression hearing. (*Wimberly v. Superior Court*, *supra*, 16 Cal.3d at p. 565.) Moreover, the People *also* introduced the type of evidence that is often relevant for qualifying gang experts – e.g., Morales's previous experience with cases involving this gang, his personal knowledge of E.M. and his gang affiliation, the prior arrest in the apartment complex, his consultation with gang unit officers, and his knowledge of this area as a metro division officer. (*People v. Olguin* (1994) 31 Cal.App.4th 1355, 1370.) But even had J.C. shown that Morales was not qualified to testify about gang symbols and clothes, the result would not change. Morales also testified this was "a high-crime neighborhood." The evidence regarding the other factors he considered, including J.C.'s hand movement to the waistband, J.C.'s and E.M.'s reactions and behavior, E.M.'s known gang affiliation, and Morales's prior experience with the apartment complex, supported his decision to conduct the patdown.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J. TANGEMAN, J.

Morton Rochman, Judge

Superior Court County of Los Angeles

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