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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDREW F.

Defendant and Appellant.

2d Crim. No. B294999  
(Super. Ct. No. 2018026821)  
(Ventura County)

Andrew F. appeals a juvenile court disposition order declaring him a ward of the court and placing him on formal probation with terms and conditions. (Welf. & Inst. Code, § 602.) We affirm.

This appeal concerns an encounter that soon developed into a detention, search, and arrest when a Ventura County sheriff's detective saw the metal clip of a knife protruding from Andrew F.'s jeans pocket. Following Andrew F.'s unsuccessful motion to suppress evidence of the knife and other soon-discovered contraband, he admitted to unlawful possession of alcohol, carrying a concealed and loaded firearm, and carrying a

switchblade knife. (Bus. & Prof. Code, § 25662, subd. (a); Pen. Code, §§ 25400, subd. (a)(2), 21510, subd. (b).) He now appeals the denial of his suppression motion.

### *FACTUAL AND PROCEDURAL HISTORY*

On October 11, 2018, the Ventura County prosecutor filed an amended Welfare and Institutions Code section 602 petition alleging that Andrew F. unlawfully possessed alcohol, carried a concealed and loaded firearm, and carried a switchblade knife, among other allegations. Andrew F. filed a suppression motion to challenge the reasonableness of the detention and search that led to the discovery of the weapons.

#### *Suppression Hearing*

On October 5, 2018, Ventura County Sheriff's Detectives John Lopez and Jose Torres patrolled Vineyard Street in Oxnard performing drug enforcement duties. The deputies drove an unmarked vehicle but wore raid vests with lettering indicating they were sheriff's deputies. They saw Gerald Silva, a parolee and El Rio criminal street gang member, at a gasoline station. In violation of his parole conditions, Silva wore clothing affiliated with the street gang. Silva had parked his vehicle in the gasoline station parking lot, had the vehicle's hood open, and was pouring oil into the vehicle engine. A man with a bicycle stood nearby and spoke with Silva. The deputies were familiar with Silva and his vehicle from prior contacts with him and his arrests; they also knew that he was a parolee with search terms, including search of his vehicle.

Torres drove into the gasoline station lot and parked 10 to 15 feet behind Silva's vehicle. Lopez approached Silva and directed him to place his hands behind his back and submit to a parole search. Lopez held his Taser weapon because he knew

that Silva carried weapons and had a history of violent conduct. Lopez placed Silva in handcuffs, searched him, and found a six-inch knife in Silva's pocket.

After Lopez restrained Silva, he noticed Andrew F. sitting in the front passenger seat of Silva's vehicle. By the driver's side window, Lopez approached Andrew F. and told him to "remain seated" and place his hands "where [Lopez] can see them." Lopez testified that he feared for his safety because he and Torres were outnumbered and Silva and Andrew F. were physically large men.<sup>1</sup>

After approximately 10 seconds, Torres asked Andrew F. to step outside the vehicle to allow a parole search of Silva's vehicle. When Andrew F. stepped outside the vehicle, Torres noticed that he wore baggy clothing. For that reason, he asked Andrew F. to walk with his hands behind his back. Torres then asked Andrew F. if he had any weapons. He replied that he did not. Torres asked Andrew F. if he could pat him down for weapons; Andrew F. refused consent. Torres then glanced at Andrew F.'s pocket and saw a metal clip. Based upon his police officer training and years of patrol experience, Torres knew the clip was part of a knife. Torres then lifted Andrew F.'s shirt to remove the knife and saw a methamphetamine glass pipe.

Torres knew then that he would arrest Andrew F. for possession of drug paraphernalia. He performed a search incident to arrest and found a loaded revolver in Andrew F.'s waistband and ammunition in a pants pocket. The knife that Torres saw earlier was an illegal spring-assisted flip knife. The encounter with Andrew F. lasted "[m]aybe a minute or so."

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<sup>1</sup> The probation report describes Andrew F. as six feet two inches tall and weighing 220 pounds.

Following argument by the parties, the juvenile court denied Andrew F.'s suppression motion. The court found that the deputies ordered Andrew F. to leave Silva's vehicle for reasons of officer safety prior to a lawful vehicle search, and that he was not "necessarily . . . detained." The clip of a knife was visible from Andrew F.'s pocket, which then justified a patdown search for reasons of officer safety.

#### *Adjudication and Disposition*

The juvenile court sustained the allegations of counts 2, 3, and 4 of the amended petition following Andrew F.'s admissions to those counts. (Count 2 involved the possession of alcohol from an earlier incident.) The court then declared Andrew F. a ward of the court, and placed him on formal probation. The court ordered him to serve 60 days in juvenile hall and, afterward, 30 days of electronic monitoring. It also awarded Andrew F. 40 days of credit and dismissed the remaining counts of the amended petition. The court declared counts 2 and 4 as misdemeanors and Andrew F.'s maximum term of confinement as three years four months.

Andrew F. challenges the legality of his detention and patdown.

#### *DISCUSSION*

Andrew F. argues that the juvenile court erred by concluding that he was not detained. He relies upon *People v. Brown* (2015) 61 Cal.4th 968, 979-980 (driver seated in already-parked vehicle detained when police officer stopped behind driver and activated emergency lights) and *People v. Sandoval* (2008) 163 Cal.App.4th 205, 212 (patdown search of person on steps of narcotics residence impermissible without suspicion person armed and dangerous). Andrew F. points out that Lopez directed

him to place his hands on the dashboard; the deputies' vehicle was 10 to 15 feet behind Silva's vehicle; and the deputies placed Silva and the man with the bicycle in handcuffs. Andrew F. asserts that he submitted to this show of authority by placing his hands on the dashboard and leaving the vehicle when directed.

In ruling upon a suppression motion, the trial court determines the facts, selects the rule of law, and applies it to the facts to determine whether the law has been violated. (*People v. Brendlin* (2008) 45 Cal.4th 262, 268; *People v. Leath* (2013) 217 Cal.App.4th 344, 350.) We review the court's factual findings pursuant to a substantial evidence standard. (*People v. Suff* (2014) 58 Cal.4th 1013, 1053 [reviewing court defers to trial court's express or implied factual findings that are supported by substantial evidence]; *People v. Tully* (2012) 54 Cal.4th 952, 979 [in suppression hearing, trial court determines credibility of witnesses, weighs the evidence, and draws reasonable inferences therefrom].) We independently determine the legality of a search or arrest upon the established facts. (*Suff*, at p. 1053.) We also affirm the court's ruling if it is correct on any applicable theory of law. (*People v. Evans* (2011) 200 Cal.App.4th 735, 742.) This standard of review is equally applicable to suppression motions in juvenile court proceedings. (*In re Lennies H.* (2005) 126 Cal.App.4th 1232, 1236.)

A police officer may approach and question a person in a public place if the person is willing to respond. (*People v. Brown*, *supra*, 61 Cal.4th 968, 974.) "Such consensual encounters present no constitutional concerns and do not require justification." (*Ibid.*) When the officer by means of physical force or show of authority, however, restrains the person's liberty, the seizure of that person must be constitutionally justified. (*Ibid.*)

In situations involving a show of authority, a person is seized if, in view of the circumstances, a reasonable person would have believed that he or she was not free to leave or terminate the encounter and the person actually submits to the show of authority. (*Ibid.*)

Unlike a consensual encounter, a detention must be supported by a reasonable suspicion that the person is involved in criminal activity. (*People v. Zaragoza* (2016) 1 Cal.5th 21, 56.) Circumstances suggesting a detention include the threatening presence of several officers, the display of weapons, physical touching of a person, or use of language or tone of voice indicating compliance is required. (*United States v. Mendenhall* (1980) 446 U.S. 544, 554.) An assessment whether police conduct amounts to a seizure implicating the Fourth Amendment turns upon the circumstances in each individual case. (*People v. Brown, supra*, 61 Cal.4th 968, 980.)

The United States Supreme Court has held that a police officer effecting a traffic stop may order passengers to leave the vehicle pending completion of the stop. (*Maryland v. Wilson* (1997) 519 U.S. 408, 415.) “[A]s a practical matter, the passengers are already stopped by virtue of the stop of the vehicle. The only change in their circumstances which will result from ordering them out of the car is that they will be outside of, rather than inside of, the stopped car.” (*Id.* at pp. 413-414.)

Moreover, for his own protection and safety, a police officer may conduct a patdown search to find weapons that the officer reasonably believes or suspects are then in the possession of the person accosted. (*Ybarra v. Illinois* (1979) 444 U.S. 85, 93 [general rule]; *People v. Mendoza* (2011) 52 Cal.4th 1056, 1082 [patdown justified where officer outnumbered by three males, one

wearing a sheathed knife]; *People v. Collier* (2008) 166 Cal.App.4th 1374, 1378 [patdown justified by passenger's size, his baggy clothing, and knowledge that he or driver may have been smoking marijuana].) The judiciary should not lightly second-guess a police officer's decision to perform a patdown search for weapons to ensure officer safety. (*Collier*, at p. 1378.)

Here the deputies approached Andrew F. as an apparent afterthought when they noticed that he was inside Silva's vehicle. For approximately 10 seconds, Andrew F. placed his hands on the dashboard and thereafter left the vehicle in order that the deputies could conduct a vehicle search.

Silva, Andrew F., and the man with the bicycle outnumbered the two deputies. Torres requested permission to conduct a patdown search but Andrew F. refused consent. Andrew F. was not handcuffed during the encounter and the deputies made no physical contact with him until Torres observed the knife clip. (*People v. Brown, supra*, 61 Cal.4th 968, 980 [assessment whether police conduct amounts to a seizure must consider individual circumstances].) This occurred in a matter of seconds.

There were specific and articulable facts to conduct a limited patdown search of Andrew F. based upon officer safety. (*People v. Collier, supra*, 166 Cal.App.4th 1374, 1378.) The deputies lawfully requested Andrew F. to leave the vehicle so that they could conduct a parole search. (*Maryland v. Wilson, supra*, 519 U.S. 408, 414-415 [minimal intrusion to order passengers from vehicle during traffic stop].) Torres was concerned with Andrew F.'s baggy clothing and his physical stature. Torres also explained to Andrew F. that older seasoned gang members will ask younger members to carry weapons and

contraband. Following Andrew F.'s refusal to consent to a patdown search, Torres noticed a knife clip in Andrew F.'s pocket. Torres testified: "[I]nitially I asked him if he had any weapons. He said no. I asked him if he minded if I give him a pat-down search. He said he did not consent. At which time I looked down at his pockets and I noticed he had a clip of a knife there."

The disposition order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.



Kevin J. McGee, Judge

Superior Court County of Ventura

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