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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re A.F., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B283933
(Super. Ct. No. TJ22635)
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

A.F.,

Defendant and Appellant.

Appellant A.F., a juvenile, was in a car with two men. Police stopped the car and ordered the occupants out. One of the officers then saw a loaded 9mm handgun on top of the center console. The juvenile court denied appellant's suppression motion. It sustained felony charges of possession of a firearm and live ammunition, and found the gang enhancements true.

Appellant contends that the police lacked probable cause to stop the car, and the statements he subsequently made were taken in violation of *Miranda*.¹ We affirm the denial of the suppression motion. The claimed *Miranda* violation was forfeited by appellant's failure to raise it below. Nonetheless, we conclude that there was no violation.

FACTS

Officer Alex Alas has worked for the Los Angeles Police Department for 10 years. While on patrol with his partner on May 30, 2017, Alas saw a man standing in the middle of 84th Street, looking over his shoulder at a nearby intersection. Alas followed the man's gaze and saw a Honda Civic turning onto 84th Street. The Civic drove by the patrol car at approximately 35 miles per hour, 10 miles over the residential area speed limit.

In a video taken from Alas's body camera, he is heard explaining to his partner why he stopped the Civic. He said that "when I saw the male black in the middle of the street and he looked at the car, that is what drew my attention." There was no mention of the speed of the car. Alas testified, however, that "the reason I stopped [the car] was for the unsafe speed in a residential area."

Alas made a U-turn and stopped the Civic. Appellant was in a rear passenger seat. The driver immediately put his hands up in front of his chest, in a surrender gesture that Alas found unusual. Alas asked if they had weapons in the car. The driver, Velarde, said "no." Appellant and the front passenger, Cruz-Alvarez, shook their heads in denial. All three got out of the car at the officer's direction.

¹ *Miranda v. Arizona* (1966) 384 U.S. 436.

Alas looked into the Civic and saw a 9mm semi-automatic handgun on top of the center console. This discovery was captured on Alas's body camera. The gun held nine rounds. Appellant was sitting within reach of the gun and had an unobstructed view of it.

Alas's duties are primarily gang-related. While investigating over 100 instances of gang members with guns in their cars, Alas learned that it is a common gang practice to leave a gun within reach of everyone in the car, to facilitate shootings or robberies. Alas was assigned to crime suppression resulting from a spike in shootings between rival gangs, Florencia 13 (F13) and Barrios Majados (BMS). When appellant was detained, he was in the area where an F13 member and two BMS members were recently killed.

A fuller account of F13--and its rivalry with BMS--was given by Officer Bret Populorum. He described how individuals enter gangs and ascend the hierarchy by "putting in work" to protect territory in which the gang sells drugs. F13 sells narcotics and engages in violent crime; it has about 3000 members in Los Angeles. Appellant's companions, Velarde and Cruz-Alvarez, are admitted F13 members. The gang's insignia is tattooed in large letters on Cruz-Alvarez's shaved head.

F13 and BMS are feuding over the local drug trade. One week before appellant's arrest, an F13 member was killed; four days later, two BMS members were killed in retaliation. Populorum opined that appellant is a member of F13 because he identified himself as being part of an F13 clique, is familiar with F13 monikers and crimes, was on probation for a 2016 firearm offense when he was detained, and was riding with known F13 members in gang territory within reach of a loaded gun during an

active gang feud, showing his willingness to put in work for F13 to prove his worth.

PROCEDURAL HISTORY

A petition alleged that appellant, age 17, possessed a firearm (count 1) and live ammunition (count 2) while acting for the benefit of, at the direction of, and in association with a criminal street gang, with the intent to promote, further and assist in the gang's criminal conduct. (Welf. & Inst. Code, § 602; Pen. Code, §§ 186.22, subd (b)(1)(A), 29610, 29650.) Appellant moved to suppress evidence of a handgun and his statements to the police, claiming that they arose from an illegal detention. (Welf. & Inst. Code, §700.1.)

After denying the motion to suppress, the court sustained the petition. It deemed both counts felonies and found the gang allegations true.² Appellant was declared a ward of the court and placed in a camp-community program for seven to nine months. The court set a maximum term of confinement of seven years, eight months.

DISCUSSION

Appellant contends that his detention violated the Fourth Amendment because Officer Alas lacked a reason for making a traffic stop. He also asserts that officers violated his privilege against self-incrimination by questioning him before giving *Miranda* warnings. We conclude that the traffic stop and police interview did not exceed constitutional limits.

² The minute order mistakenly lists count 2 as a misdemeanor. The court's oral pronouncement controls over the clerk's minute order. (*People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2.)

““The standard of appellate review of a trial court’s ruling on a motion to suppress is well established. We defer to the trial court’s factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment.”” (*People v. Suff* (2014) 58 Cal.4th 1013, 1053.)

1. Police Had Reasonable Suspicion to Make a Traffic Stop

For police, “[t]he foremost method of enforcing traffic and vehicle safety regulations . . . is acting upon observed violations.” (*Delaware v. Prouse* (1979) 440 U.S. 648, 659.) A motorist may be stopped on “reasonable suspicion” that traffic laws were violated. (*Navarette v. California* (2014) 572 U.S. 393, 401-402; *People v. Wells* (2006) 38 Cal.4th 1078, 1082-1083.) When inquiring into the reasonableness of an initial stop, the courts determine whether the officer’s action was justified at its inception, based on specific, articulable facts. (*Terry v. Ohio* (1968) 392 U.S. 1, 19-22; *Wells*, at p. 1083.)

Appellant concedes that speeding is a sufficient reason for a traffic stop. An officer may stop a car based on a visual estimate of speed. (*People v. Nice* (2016) 247 Cal.App.4th 928, 934, 936 [vehicle believed to be traveling 10-15 miles per hour over the limit].) Here, Alas testified that appellant was riding in a car that was traveling 10 miles over the speed limit in a residential area. On this testimony alone, Alas’s action of stopping the speeding Civic was justified at its inception.

Appellant argues that Alas did not reasonably suspect a speeding violation and surmises that he stopped the car for other reasons. Appellant points to Alas’s failure to mention the car’s speed in the body camera video. Alas was confronted at the

suppression hearing with the possible inconsistency between the video and his testimony. The court accepted the officer's explanation that the reaction of the pedestrian in the street merely alerted him to the oncoming Civic.

There is no ground for overturning the court's decision. The court found Alas credible when he testified that he stopped the car because it was traveling 10 miles over the limit. It said, "based on that traffic violation, he had a basis to stop the car." We cannot retry witness credibility and disbelieve Alas's testimony because "[t]he power to judge credibility of witnesses, resolve conflicts in testimony, weigh evidence and draw factual inferences, is vested in the trial court." (*People v. Superior Court (Keithley)* (1975) 13 Cal.3d 406, 410; *People v. Kelly* (1990) 51 Cal.3d 931 947 ["we accept the trial court's resolution of disputed acts and inferences, and its evaluation of credibility, if supported by substantial evidence"].)

Appellant is not aided by *People v. Hester* (2004) 119 Cal.App.4th 376, in which police stopped a car occupied by black men in Crip's territory. Knowing that a gang shooting occurred earlier and believing that retaliatory activity was at hand, the officers stopped the car and found contraband. (*Id.*, at pp. 382-384.) The police in *Hester* acted on an impermissible "hunch" without articulating any objective facts showing criminal activity. (*Id.*, at pp. 391-392.) Here, by contrast, Alas gave an objective reason for stopping the Civic: the driver was speeding in a residential neighborhood. The traffic violation is a sufficient reason for the stop. Once the car was stopped, the loaded gun in plain view provided cause for arrest.

2. Claimed *Miranda* Violation

Appellant concedes that defense counsel did not assert a *Miranda* violation. It was agreed at trial that the recording of appellant's interview with police would begin when *Miranda* warnings were administered. Counsel did not object to the receipt of the recording into evidence. Appellant now raises *Miranda* for the first time on appeal, arguing that Officer Populorum based his opinion about appellant's membership in F13--grounds for gang enhancements--on the entire recording, before *Miranda* warnings were given.

No judgment can be reversed on the grounds of a *Miranda* violation unless the record discloses a timely and specific objection. (*People v. Holt* (1997) 15 Cal.4th 619, 666.) The objection must identify the nature of the evidence and reasons for excluding it, to give the prosecution an opportunity to establish its admissibility. (*Id.* at pp. 666-667.) Here, no objection based on *Miranda* was made. On the contrary, defense counsel stipulated to have the court listen to appellant's interview with the police, beginning with the *Miranda* advisements. The court did not consider any potentially inadmissible pre-*Miranda* statements from appellant.

Appellant's argument is belied by the record because Populorum did not rely on appellant's pre-*Miranda* statements. In the post-*Miranda* portion of his interview, appellant gave the moniker of an F13 member who was shot; acknowledged his friendship with Velarde and Cruz-Alvarez; stated that he is from the "Neighborhoods;" and bragged that "if we were going to put in work, it would have been done." Appellant admittedly saw the gun on top of the Civic's console.

Based solely on appellant's post-*Miranda* statements, Populorum could testify that Velarde and Cruz-Alvarez are self-admitted F13 members; that the "Neighborhoods" is part of F13; and that by riding with two F13 members within reach of a loaded gun during a gang feud, appellant was putting in work for F13. The evidence against appellant is so compelling that any error did not contribute to the judgment, beyond a reasonable doubt. (*Arizona v. Fulminante* (1991) 499 U.S. 279, 310-311; *People v. Elizalde* (2015) 61 Cal.4th 523, 542 [admission of statements regarding an arrestee's gang affiliation, obtained in violation of the Fifth Amendment, is reviewed for prejudice beyond a reasonable doubt].)

DISPOSITION

The judgment is affirmed.

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PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

J. Christopher Smith, Judge
Superior Court County of Los Angeles

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Appeal, for Defendant and Appellant.

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