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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. ARMAN NIKOGOSYAN et al., Defendants and Appellants.	B278956 (Los Angeles County Super. Ct. No. GA096339)

APPEAL from a judgment of the Superior Court of Los Angeles County, Suzette Clover, Judge. Affirmed.

Wegman & Levin, Debra J. Wegman and Michael M. Levin for Defendants and Appellants.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Victoria B. Wilson, Supervising

Deputy Attorney General, and Idan Ivri, Deputy Attorney General, for Plaintiff and Respondent.

Following the denial of their motion to suppress evidence at the preliminary hearing (Pen. Code, § 1538.5[1]), in which they argued that they had been illegally detained and searched, and following the trial court's denial of their renewed motion to suppress (§ 1538.5, subd. (i)), Arman Nikogosyan (Nikogosyan) and Arsen Nahapetyan (Nahapetyan) (collectively, Defendants) pleaded nolo contendre to a single count of identity theft (§ 530.5, subd. (c)(3)[2]).

On appeal, Defendants contend the trial court erred in denying their suppression motions. We disagree and, accordingly, affirm the judgment.

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

[2] Section 530.5, subdivision (c)(3), in pertinent part, provides as follows: "Every person who, with the intent to defraud, acquires or retains possession of the personal identifying information . . . of 10 or more other persons is guilty of a public offense, and upon conviction therefore, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment."

BACKGROUND

I. Defendants' arrest

A. THE 911 CALL

On April 6, 2015, in daylight around 6:30 p.m., a UPS deliveryman, Robert Wylie (Wylie), drove his delivery truck down Alta Vista Drive in La Canada, in Los Angeles County.

As Wylie approached an Alta Vista Drive address, he noticed a white car parked near the mailbox for that address. Wylie saw that the mailbox was open and that Nikogosyan was standing near it looking through some mail in his hand. Wylie recognized Nikogosyan as not being a resident at the Alta Vista Drive address, because he had "delivered to the residence multiple times." Thus, as he drove past, Wylie looked closely at Nikogosyan, the white car and its license plate—a paper dealer's sticker that said "AUTO" on it—and the man sitting in the car's driver's seat, Nahapetyan. In his rearview mirror, Wylie first watched Nikogosyan close the mailbox and get into the white car and then he watched the car drive away.

After he drove past the white car, Wylie, because he found the situation to be suspicious, called 911 and "reported there was a vehicle, a white vehicle with license plate 'AUTO' [and] that someone had mail in their hand." Wylie also provided a physical description of the Defendants to the 911 operator.

After calling 911, Wylie returned to the Alta Vista Drive address, collected the mail from the mailbox and left it, along with a note, at the resident's door.

B. THE TRAFFIC STOP

Less than a mile from the Alta Vista Drive address, Los Angeles County Sheriff Deputy Roman Nelson (Nelson) spotted the Defendants in a white car and conducted a traffic stop. Nelson initiated the traffic stop because "two to three minutes" before spotting Defendants, Nelson had received a dispatch describing the Defendants and their car in connection with a possible "mail theft."

After Nelson advised Nahapetyan of the reason for the traffic stop, he saw eight to 10 pieces of mail in the center console compartment (which was open) and the passenger-side door compartment. When Nelson asked Nahapetyan whether the mail belonged to him, he answered "no." After two additional deputies arrived and took over the investigation, Nelson noticed additional pieces of mail between the sun roof cover and the roof of the white car.

C. IMMEDIATE POSTTRAFFIC STOP INVESTIGATION

After Defendants had been detained, Deputy Nancy Kwon (Kwon) met Wylie at the Alta Vista Drive address. Wylie told Kwon that he had seen Nikogosyan near the open mailbox. Wylie told Kwon that when he made eye contact with Nikogosyan, he appeared "startled," "quickly closed the mailbox," and entered a white car which then drove away. Wylie described Nikogosyan to Kwon as an Armenian man with a shaved head.

Kwon then went to the location where Defendants had been detained after the traffic stop. She spoke to Deputy Estrada (Estrada), who told her that after she asked

Nikogosyan if he had been around a mailbox, he responded by giving her three envelopes none of which were addressed to either him or Nahapetyan. Kwon then spoke to Nelson, who told her that both Defendants claimed they had been in the area because they were looking to purchase a house. Having been to the Alta Vista Drive address, Kwon knew there was no signage in front of the house indicating that it was for sale.

Based on the information from Wylie, Estrada and Nelson, Kwon conducted a further search of Defendants' car for evidence of mail theft. She found mail "everywhere" in the car, including in the center console, in the door compartments, and wedged between the sun roof and a plastic panel. There were also torn pieces of letters under the stereo. Numerous pieces of mail collected from Defendants' car did not bear their names. In total, the police found mail inside Defendants' car addressed to 18 different people, none of whom were the Defendants.

II. Denial of Defendants' suppression motions

On November 25, 2015, Defendants moved to suppress all incriminating evidence obtained as a result of the purportedly illegal traffic stop.

On March 7, 2016, at the conclusion of the preliminary hearing in this matter, the court denied Defendant's motion to suppress, finding that, given the "nature" of Wylie's 911 call, the geographic "proximity" of the call to the site of the traffic stop, and the temporal "closeness" of the call to when the traffic stop was made, "the officers had probable cause to

make the arrest." For the court, it was important that Wylie "knew the residence and he knew that these defendants [we]re not part of the residence."

On March 22, 2016, the People filed a one-count information charging Defendants with identity theft (§ 530.5, subd. (c)(3)). On May 3, 2016, Defendants renewed their motion to suppress. On May 27, 2016, the trial court denied the renewed motion, stating: "What we have here is a clearly-identified car, someone standing with mail in [his] hand, looking at a mailbox, and the driver calling 911 presumably because he thought 911 should have been called or he wouldn't call 911. [¶] I think that's enough. I think that provides reasonable suspicion."

On September 9, 2016, Defendants pleaded nolo contendre to the single count of identity theft. The trial court sentenced Defendants to three years of formal probation and 365 days in county jail.

DISCUSSION

Defendants make two related claims—one implicit and one explicit—with respect to the denial of their suppression motions. First, Defendants implicitly argue that the People failed to meet their burden under the so-called "*Harvey–Madden* rule"[3] by (a) noting repeatedly that at the preliminary hearing "the People did *not* call the 911

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[3] See *People v. Harvey* (1958) 156 Cal.App.2d 516 (*Harvey*) and *People v. Madden* (1970) 2 Cal.3d 1017 (*Madden*).

dispatcher . . . nor did they introduce a recording of [the] 911 call" and (b) stating that Nelson's "actions in making the stop can be justified *only* if the People had met the challenge by bringing forth evidence that the officer who originally furnished the (alleged) information . . . possessed the articulable facts that would justify the stop."

Second, and more explicitly, Defendants argue that Nelson lacked the "requisite 'reasonable suspicion' (either himself or by the official channels principle) for th[e] stop to pass muster under the Fourth Amendment."

As discussed below, we are not persuaded by either argument.

I. Standard of review

When analyzing a ruling on a suppression motion, we " ' "defer to the superior court's express and implied factual findings if they are supported by substantial evidence, [but] we exercise our independent judgment in determining the legality of a search on the facts so found." ' " (*People v. Tully* (2012) 54 Cal.4th 952, 979.) " 'As the finder of fact . . . the superior court is vested with the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences in deciding whether a search is constitutionally unreasonable.' " (*Ibid.*)

II. Defendants' implicit *Harvey-Madden* claim fails

A. RELEVANT LEGAL PRINCIPLES

The *Harvey–Madden* rule is a set of evidentiary rules "established to govern the manner in which the prosecution

may prove the underlying grounds for [a detention or] arrest when the authority to arrest has been transmitted to the arresting officer through police channels." (*People v. Collins* (1997) 59 Cal.App.4th 988, 993.) As our high court has explained, "[a]n officer may arrest or detain a suspect 'based on information received through "official channels." ' [Citations.] If a 911 call 'has *sufficient indicia of reliability* . . . a dispatcher may alert other officers by radio, who may then rely on the report, [citation], even though they cannot vouch for it.' [Citations.] However, upon proper objection [citation] ' " 'the People must prove that the source of the information is something other than the imagination of the officer who does not become a witness.' " ' [Citations.] This requirement can be met by calling the police dispatcher as a witness at the suppression hearing or by introducing a recording of the 911 call." (*People v. Brown* (2015) 61 Cal.4th 968, 983 (*Brown*), italics added.)

The *Harvey–Madden* rule also applies to the "reasonable suspicion" standard for an officer in the field to effect a detention to investigate possible criminal activity. (See *Brown*, *supra*, 61 Cal.4th at p. 982.) Thus, when a defendant challenges whether the information in a radio call provided a detaining officer with reasonable suspicion for an investigatory detention, the prosecution has the same *Harvey–Madden* burden as in the context of whether probable cause existed to arrest. Accordingly, the prosecution must show that the reasonable suspicion

information upon which the officer in the field relied was not made up inside the police station. (*Brown*, at p. 983.)

As our highest court noted, the People's burden under the *Harvey–Madden* rule "can be met by calling the police dispatcher as a witness at the suppression hearing or by introducing a recording of the 911 call." (*Brown*, *supra*, 61 Cal.4th at p. 983.) It is well established, however, that the People are not required to call the radio dispatcher or play the 911 recording. Instead, the People may rely on corroborating circumstantial evidence to demonstrate that the police officers did not fabricate the dispatch or the information it contained. (*In re Richard G.* (2009) 173 Cal.App.4th 1252, 1258–1260 (*Richard G.*).)

In *Richard G.*, the defendant raised a *Harvey–Madden* objection, contending the prosecution could not demonstrate "his detention was lawful unless it identified the source of the original report or called the police dispatcher to testify that it had been received." (*Richard G.*, *supra*, 173 Cal.App.4th at p. 1256.) The prosecution did not offer any such evidence, but the trial court allowed the arresting officers to testify about the dispatch and denied the defendant's motion to suppress. (*Ibid.*)

The *Richard G.*, *supra*, 173 Cal.App.4th 1252 court affirmed. It observed the prosecution may have "blundered by not producing in court the recipient of the original telephone report," (*id.* at p. 1260) but determined that "there was no 'manufacture' of information. The information received by the police dispatcher was radioed to multiple

officers in multiple patrol cars and it provided detailed descriptions of the two suspects. Absent . . . the officer himself calling in the report to the dispatcher or, . . . clairvoyance on the part of the dispatcher, there is no way that the dispatcher could have manufactured these detailed descriptions at or near the place and time the officers saw appellant and his companion matching the detailed descriptions. [¶] Where, as here, the evidence and the reasonable inferences flowing from it show that the police dispatcher actually received a telephone report creating a reasonable suspicion of criminal wrongdoing, it is not necessary to require strict compliance with the '*Harvey–Madden*' rule." (*Id.* at p. 1259; see *People v. Johnson* (1987) 189 Cal.App.3d 1315, 1320 [information from dispatch "corroborated by what the officers observed at the scene, making it virtually impossible for the information to have been made up in the police department"].)

B. THE PEOPLE MET ITS BURDEN UNDER THE *HARVEY–MADDEN* RULE

Here, as in *Richard G.*, *supra*, 173 Cal.App.4th 1252, circumstantial evidence demonstrates that there was no " 'manufacture' " of information. (*Id.* at p. 1259.) At the preliminary hearing, the People presented Wylie, the witness who made the 911 call. Wylie testified that he saw Nikogosyan standing by the open mailbox for the Alta Vista Drive address with mail in his hand. He further testified that he knew Nikogosyan did not live at the Alta Vista Drive address and that after Wylie met Nikogosyan's eyes, the

latter closed the mailbox quickly and then drove away in a white car with another man driving and "AUTO" on its temporary license plate. Just a few minutes later and less than a mile from the AltaVista Drive address, Nelson stopped Defendants in a car that matched Wylie's description with Nikogosyan in the passenger seat and Nahapetyan driving. Nelson immediately noticed mail in the car's center console and in the passenger door's side pocket and then, a short time later, discovered more mail stuck behind a sun visor. Ultimately, police found even more mail, *none* of it addressed to Defendants.

These corroborated details serve the purpose of the *Harvey–Madden* rule: they are persuasive evidence the reported tip was genuine and not a fabrication of a " 'phantom informer' " by a law enforcement official. (*People v. Poehner* (1971) 16 Cal.App.3d 481, 487.) Absent "clairvoyance . . . there is no way the dispatcher could have 'manufacture[d]' " the information that two individuals in a white sedan with paper plates featuring the word "AUTO" were approximately one mile away from where Wylie saw Nikogosyan near a mailbox on Alta Vista Drive. (*Richard G.*, *supra*, 173 Cal.App.4th at p. 1259.)

Accordingly, we reject Defendant's implicit claim of *Harvey–Madden* error.

III. Defendants' explicit "reasonable suspicion" claim fails

A. RELEVANT LEGAL PRINCIPLES

"The Fourth Amendment permits brief investigative stops . . . when a law enforcement officer has 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.' [Citations.] The 'reasonable suspicion' necessary to justify such a stop 'is dependent upon both the content of information possessed by police and its degree of reliability.' [Citation.] The standard takes into account 'the totality of the circumstances—the whole picture.' [Citation.] Although a mere ' "hunch" ' does not create reasonable suspicion [citation], the level of suspicion the standard requires is 'considerably less than proof of wrongdoing by a preponderance of the evidence,' and 'obviously less' than is necessary for probable cause." (*Navarette v. California* (2014) 572 U.S. ___ [134 S.Ct. 1683, 1687] (*Navarette*); see *People v. Wells* (2006) 38 Cal.4th 1078, 1083.) All that is required to justify an investigatory traffic detention is that " 'on an objective basis, the stop "not be unreasonable under the circumstances." ' " (*People v. Suff* (2014) 58 Cal.4th 1013, 1054; *Wells,* at p. 1083 ["[t]he guiding principle in determining the propriety of an investigatory detention is 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security' "].)

In *Navarette*, *supra*, 572 U.S. ___ [134 S.Ct 1683], an anonymous 911 caller reported that a driver of a Silver Ford

150 pickup truck with a specific license plate number had run the anonymous caller off the highway. (*Id*. at pp. 1686, 1689.) Within 18 minutes, California highway patrol (CHP) officers spotted the truck near the reported location and followed it for about five minutes before pulling it over. As the responding officers approached the truck, they smelled marijuana. The officers searched the truck and seized 30 pounds of marijuana. The court approved of the detention (the traffic stop). (*Id*. at pp. 1687–1688.) The court found the 911 report reliable because the caller (1) "necessarily claimed eyewitness knowledge" of the dangerous driving, (2) must have known the truck was near the location where it was stopped, and (3) used the 911 system to report the incident and, in doing so, was presumably aware 911 calls are recorded and traceable. (*Id*. at pp. 1689–1690.)

In *Brown*, *supra*, 61 Cal.4th 968, our highest court found a citizen's report of a disturbance to the police, when coupled with a police officer's "very quick response time" to the scene, and the defendant's presence "near the scene," sufficient to support reasonable suspicion of criminal activity justifying the officer's detention of the defendant for an investigation. (*Id*. at pp. 980–981.) Our Supreme Court found the citizen's report reliable because (1) it showed the caller's personal knowledge of the incident; (2) the call was contemporaneous; (3) the caller used the 911 system which has features providing " 'some safeguards' " against making false reports; and (4) it has been judicially recognized that

private citizens who report crimes "generally have no bias or motive other than good citizenship, and therefore tend to be reliable." (*Id.* at pp. 981–982.)

Similarly, *in People v. Dolly* (2007) 40 Cal.4th 458 (*Dolly*), an unidentified 911 caller reported that an African–American male had just pulled a gun on him and had said a gang name. The caller said he believed the perpetrator was about to shoot him. The caller specifically described the perpetrator, the parked vehicle the perpetrator was sitting in, and gave an exact location. When the police officers arrived at that location a few minutes later, they found the vehicle and a man sitting inside who matched the description provided by the caller. The officers asked him to get out of the car, at which time they found a loaded .38–caliber revolver. (*Id.* at p. 462.) The issue in *Dolly* was whether the anonymous tip was sufficient to justify the defendant's detention. Our highest court concluded the detention was justified by reasonable suspicion of criminal activity under the totality of the circumstances. (*Id.* at pp. 465–466.) In reaching its conclusion, the Supreme Court reasoned that the tipster-victim provided a firsthand, contemporaneous description of the crime which included an accurate and complete description of the perpetrator and the perpetrator's location. These details were corroborated within minutes by the police when they arrived. (*Id.* at p. 468.)

B. THERE WAS REASONABLE SUSPICION FOR THE TRAFFIC STOP

As a preliminary matter, it is important to note that the applicable standard is not probable cause but the far more relaxed standard of reasonable suspicion. As our Supreme Court has noted, " '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.' " (*Dolly*, *supra*, 40 Cal.4th at p. 463.) Moreover, as the United States Supreme Court has observed, reasonable suspicion must be based on "commonsense judgments and inferences about human behavior." (*Illinois v. Wardlow* (2000) 528 U.S. 119, 125.) Here, under the totality of the circumstances, the traffic stop was supported by reasonable suspicion.

As in *Brown*, *supra*, 61 Cal.4th 968, Wylie's 911 call was reliable because (1) it showed Wylie's personal knowledge of the incident; (2) the call was contemporaneous; and (3) Wylie, a private citizen, used the 911 system which has features providing safeguards against making false reports. (*Id*. at pp. 981–982.) In addition, when Wylie's 911 call is coupled with Nelson's quick response time in locating a white car matching the description Wylie gave to the 911 operator only a short distance from the alleged crime scene, it acquires additional indicia of reliability. (*Id*. at p. 981; see *Navarette*, *supra*, 572 U.S. ___ [134 S.Ct at pp. 1689–1690].) Although Wylie's 911 call was somewhat terse in the information it relayed to the 911 operator (he "reported there

was a vehicle, a white vehicle with license plate 'AUTO' [and] that someone had mail in their hand," along with a physical description of the Defendants), it can nonetheless be objectively and reasonably inferred from those facts (and from the fact that Wylie called 911) that there was a basis for suspecting that Defendants were engaged in criminal conduct (mail theft). Put a little differently, a commonsense judgment about human behavior necessarily leads to the conclusion that a UPS deliveryman would not make an emergency call to 911 about a man whom the deliveryman believes is holding his own mail.

Defendants, in arguing that there was no reasonable suspicion, rely principally on *Florida v. J.L.* (2000) 529 U.S. 266 (*J.L.*). Defendants' reliance is misplaced.

In *J.L.*, *supra*, 529 U.S. 266, the United States Supreme Court held that an anonymous telephone tip in that case, which reported that a young Black male standing at a bus stop in a plaid shirt was carrying a gun was insufficient, without more, to justify a detention and pat-down of the individual. (*Id.* at p. 268.) In *J.L.*, there was no audio recording of the tip, nothing was known about the informant, and it was unknown how long it took the police to respond to the tip. Upon their arrival, the police officers observed no suspicious conduct on the part of the individual and there was no indication he might have been carrying a gun. (*Ibid.*)

The court in *J.L.*, *supra*, 529 U.S. 266 recognized that there are situations, as in the case of *Alabama v. White*

(1990) 496 U.S. 325 (*White*), where "an anonymous tip, suitably corroborated, exhibits 'sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop.' " (*J.L.*, at p. 270.) In *White*, predictive information in the tip was corroborated by the police and thus provided a reasonable basis to think the informant had inside knowledge about the suspect. (*J.L.*, at pp. 270–271.) In contrast, the tip in *J.L.* lacked the indicia of reliability present in *White*. In *J.L.*, all the police had to go on was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L. (*J.L.*, at p. 271.) Consequently, the detention and search in *J.L.* were inconsistent with the guarantees of the Fourth Amendment.

In this case, in contrast to *J.L.*, *supra*, 529 U.S. 266, Wylie was not an unknown, unaccountable tipster providing scant uncorroborated information. Instead, Wylie was an identified (and thus accountable) informant who provided detailed information that was quickly corroborated by the police.

In sum, Defendants' motions to suppress were properly denied, because there was reasonable suspicion for the traffic stop.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.