Filed 6/12/12 In re D.B. CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re D. B., a Person Coming Under the Juvenile Court Law.	B233822 (Los Angeles County Super. Ct. No. YJ30602)
THE PEOPLE, Plaintiff and Respondent, v. D. B., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Wayne C. Denton, Juvenile Court Referee. Affirmed.

Jolene Larimore, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and David Zarmi, Deputy Attorneys General, for Plaintiff and Respondent.

Following the denial of his motion to suppress evidence, the minor D.B. admitted he unlawfully possessed a firearm (Pen. Code, § 12101, subd. (a)(1)), was declared a ward of the juvenile court (Welf. & Inst. Code, § 602), and ordered into camp community placement.[1] He contends the firearm seized was the fruit of an illegal detention and should have been suppressed (Welf. & Inst. Code, § 700.1). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Inglewood Police Officer Adam Butler testified at the suppression hearing that he and his partner Officer Marcco Ware were patrolling a shopping center parking lot in an unmarked police car at approximately 10:00 p.m. on November 9, 2010. They saw D.B. and three other males emerge from the Yarra Dollar Store, and look in all directions while walking quickly to a gray Dodge Charger parked in front of the store. D.B. had a large bulge in his jacket, which he held against his hip.

Officer Butler testified at this point he suspected D.B. and his three companions were engaging in a "beer run," where individuals enter a store, grab alcoholic beverages and flee without paying for them. Beer runs were occurring more commonly in this particular neighborhood due to the number of liquor stores. Butler believed the bulge in D.B.'s jacket was caused by concealed liquor, or other merchandise stolen from the Yarra Dollar Store.

As D.B. and his companions got into the Dodge Charger, Officer Ware was slowly driving up behind it. Within seconds the driver started the engine, accelerated the Dodge Charger in reverse and nearly collided with the front of the unmarked police car directly behind it. Ware braked, and, using his horn, alerted the driver of the officers' presence behind him. The driver of the Dodge Charger stopped within one to two feet of the police car.

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[1] Allegations D.B. carried a loaded firearm with a prior felony conviction (Pen. Code, § 12031, subds. (a)(1) & (2)(A)) and unlawfully possessed ammunition (Pen. Code, § 12101, subd. (n)(1)) were dismissed.

Officer Ware activated the unmarked police car's "forward facing red lights," and approached the passenger side of the Dodge Charger, while Officer Butler approached the driver's side. Before they spoke to the occupants, the officers detected the strong odor of "burnt marijuana" emanating from inside the passenger compartment.

Because the two officers were dealing with four individuals, Butler radioed for assistance. He then ordered them out of the Dodge Charger, one at a time to locate the source of the marijuana smell.[2] D.B. was seated in the back seat. When he stepped out of the Dodge Charger, a loaded, semi-automatic firearm fell to the ground from his waistband. Officers recovered the weapon and took D.B. into custody.

D.B. neither testified nor introduced other evidence at the suppression hearing.

At the conclusion of the hearing defense counsel moved to suppress the firearm, ammunition and other evidence seized as the fruit of an illegal stop. The juvenile court denied the motion, concluding the stop was justified by the officers' reasonable suspicion D.B. had been involved in criminal activity.[3]

CONTENTION

DB contends, as he did before the juvenile court, the officers lacked reasonable suspicion to conduct an investigative detention of D.B. Specifically, he argues the officers detained him based on nothing more than a hunch that he committed theft.

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[2] One of D.B.'s companions was found to be in possession of marijuana.

[3] Officer Butler also testified that D.B. and his companions did not appear to be wearing seatbelts at the time the Dodge Charger was backing towards the patrol car in violation of the Vehicle Code. However, the juvenile court discounted this observation as the officers' reason for initiating the stop.

DISCUSSION

1. *Standard of Review*

In reviewing the ruling on a motion to suppress, the appellate court defers to the trial court's factual findings, express or implied, when supported by substantial evidence. (*People v. Hoyos* (2007) 41 Cal.4th 872, 891; *People v. Ayala* (2000) 23 Cal.4th 225, 255; *People v. James* (1977) 19 Cal.3d 99, 107.) The power to judge credibility, weigh evidence and draw factual inferences is vested in the trial court. (*Id.* at p. 107.) However, in determining whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. (*People v. Hoyos, supra,* 41 Cal.4th at p. 891; *People v. Zamudio* (2008) 43 Cal.4th 327, 342, *People v. Ramos* (2004) 34 Cal.4th 494, 505.)

Whether relevant evidence obtained by assertedly unlawful means must be excluded is determined exclusively by deciding whether its suppression is mandated by the federal Constitution. (Cal. Const., art I, § 28; *People v. Rogers* (2009) 46 Cal.4th 1136, 1156, fn. 8; *In re Randy G*. (2001) 26 Cal.4th 556, 561-562.)

2. *The Investigative Detention was Lawful*

Police contacts with individuals fall into "three broad categories ranging from the least to the most intrusive: consensual encounters that result in no restraint of liberty whatsoever; detentions, which are seizures of an individual that are strictly limited in duration, scope, and purpose; and formal arrests or comparable restraints on an individual's liberty." (*In re Manuel G.* (1997) 16 Cal.4th 805, 821.)

A detention occurs within the meaning of the Fourth Amendment when the officer, by means of physical force or show of authority, in some manner temporarily restrains the individual's liberty. (*People v. Zamudio, supra,* 43 Cal.4th at p. 341; *People v. Souza* (1994) 9 Cal.4th 224, 231.) Although a police officer may approach an individual in a public place and ask questions if the person is willing to listen, the officer may detain the person only if the officer has a reasonable, articulable suspicion the detainee has been, currently is or is about to be engaged in criminal activity. (*Terry v.*

Ohio (1968) 392 U.S. 1, 21 [88 S.Ct. 1868, 20 L.Ed.2d 889]; see *In re Tony C.* (1978) 21 Cal.3d 888, 893.)

To satisfy this requirement, the police officer must "point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity." (*People v. Souza*, *supra*, 9 Cal.4th at p. 231; *United States v. Sokolow* (1989) 490 U.S. 1, 7 [109 S.Ct. 1581, 104 L.Ed.2d 1] ["the police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause. [¶] The officer, of course, must be able to articulate something more than an 'inchoate and unparticularized suspicion or "hunch."' [Citation.] The Fourth Amendment requires 'some minimum level of objective justification' for making the stop."].)

In evaluating whether that standard has been satisfied, we examine the "totality of the circumstances" in each case to determine whether a "particularized and objective basis" supports the detention. (*United States v. Cortez* (1981) 449 U.S. 411, 417 [101 S.Ct. 690, 66 L.Ed.2d 621].) "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 elude an untrained person.' [Citations.] Although an officer's reliance on a mere "'hunch'" is insufficient to justify a stop, [citation], the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard, [citation]." (*United States v. Arvizu* (2002) 534 U.S. 266, 273-274 [122 S.Ct. 744, 151 L.Ed.2d 740].) If the officer has such an objectively reasonable suspicion, a defendant's motion to suppress evidence seized in a search incident to the detention is properly denied. (*People v. Daugherty* (1996) 50 Cal.App.4th 275, 288-289; *People v. McDonald* (2006) 137 Cal.App.4th 521, 530.)

The issue before us is whether the investigative detention was supported by reasonable suspicion at its inception. The parties agree the officers' initial contact with D.B. in these circumstances – blocking the Dodge Charger in which he was sitting and activating emergency lights after sounding the horn to avoid a collision – was consonant with a detention.[4] (Compare *People v. Perez* (1989) 211 Cal.App.3d 1492, 1496 [no detention when officers parked patrol vehicle in manner that permitted defendant's car to leave] with *People v. Wilkins* (1986) 186 Cal.App.3d 804, 808-809 [detention occurred when officer parked marked police car diagonally behind defendant's vehicle so it could not leave a convenience store parking lot]); and *People v. Bailey* (1985) 176 Cal.App.3d 402 [parking directly behind defendant's vehicle and activating emergency lights constituted detention].) However, D.B.'s argument the detention was unlawful because there was no objective basis for the officers to entertain a reasonable suspicion of criminal activity at an earlier point is unfounded.

The officers detained the occupants of the Dodge Charger because they believed they had just participated in a theft of Yarra Dollar Store merchandise. The officers drew this inference from their observations that: (1) D.B. and his three companions rushed out of the Yarra Dollar Store, looking in all directions; (2) D.B. was hugging against his body an item that created a large bulge in his jacket; (3) they entered a vehicle parked in front of the store; and (4) the driver quickly accelerated in reverse nearly striking the unmarked police car. When those observations are considered together with Officer Butler's experience that such events commonly indicate so-called "beer runs," occurring with frequency in the Yarra Dollar Store neighborhood, we are left with no doubt the officers possessed a particularized and objective basis to conclude D.B. and his three

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[4] Police conducting a traffic stop seize everyone in the vehicle, not just the driver within the meaning of the Fourth Amendment. (*Brendlin v. California* (2007) 551 U.S. 249, 255 [127 S.Ct. 2400, 168 L.Ed.2d 132].)

companions had committed a crime. Although D.B. posits possible innocent explanations for his and his companions' behavior, "[a] determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct." (*United States v. Arvizu, supra,* 534 U.S. at p. 277; see also *People v. Souza, supra,* Cal.4th at pp. 233-235; *In re Tony C., supra,* 21 Cal.3d at p. 894 ["The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct."].)

The odor of burnt marijuana emanating from inside the Dodge Charger, provided the officers with reasonable suspicion that one or more of its occupants may have been in possession or transportation of drugs, which justified further investigation to determine the origin of the odor. (See *People* v. *Collier* (2008) 166 Cal.App.4th 1374, 1377-1378.) The investigative detention satisfied constitutional requirements. The suppression motion was properly denied.

DISPOSITION

The order under review is affirmed.

WOODS, Acting P. J.

We concur:

ZELON, J.

JACKSON, J.