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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A.C., A Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. A.C., Defendant and Appellant.	B267957 (Los Angeles County Super. Ct. No. TJ22285)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael Nash, Judge. Affirmed.

Holly Jackson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr. and

Tita Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

In the underlying proceeding, the juvenile court denied appellant's motion to suppress evidence, and sustained charges against him for possession of a firearm and ammunition as a minor. Appellant challenges the ruling on the motion to suppress evidence. We reject those challenges and affirm the judgment.

RELEVANT PROCEDURAL BACKGROUND

On September 22, 2015, the District Attorney of Los Angeles County filed a petition alleging that appellant was a person described by Welfare and Institutions Code section 602. The petition charged appellant in count 1 with carrying an unregistered loaded handgun (Pen. Code, § 25850, subd. (a)), in count 2 with possession of a firearm by a minor (Pen. Code, § 29610), and in count 3 with possession of live ammunition by a minor (Pen. Code, § 29650). Appellant denied the allegations in the petition.

Appellant subsequently filed a motion to suppress evidence (Welf. & Inst. Code, § 700.1). At the adjudication and dispositional hearing in connection with the motion to suppress, appellant's counsel argued the evidence against appellant was the result of an illegal detention and search by Los Angeles County Sheriff's Department deputy sheriffs. After hearing testimony regarding the incident, the court

denied the motion to suppress. Following that ruling, appellant submitted the matter on the evidence relating to the motion.[1] The court sustained the petition with respect to counts 2 and 3, dismissed count 1, and found appellant to be a person described by Welfare and Institutions Code section 602. The court committed appellant to probation at home for six months. This appeal followed.

DISCUSSION

Appellant contends the juvenile court erred in concluding that the deputy sheriffs engaged in no unlawful detention or search. For the reasons discussed below, we disagree.

A. *Governing Principles*

Under Welfare and Institutions Code section 700.1, a minor may move to suppress evidence obtained as a result of an unlawful search or seizure. The California Constitution bars the exclusion of evidence obtained as a result of an unreasonable search or seizure unless this remedy is required by the United States Constitution. (Cal. Const. art. I, § 28, subd. (d); *People v. Souza* (1994) 9 Cal.4th 224, 232

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[1] We observe that the minute order from the adjudication and dispositional hearing states that appellant waived his constitutional rights and admitted the factual allegations in the petition. However, the reporter's transcript of the hearing reflects no such waiver or admission.

(*Souza*).) "The Fourth Amendment to the United States Constitution prohibits seizures of persons, including brief investigative stops, when they are 'unreasonable.'" (*Souza, supra,* 9 Cal.4th at p. 229.)

The main issue here concerns whether the patdown search that disclosed the loaded gun resulted from, or involved, an unlawful detention. Generally, "[p]olice contacts with individuals may be placed 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. [Citations.]" (*In re Manuel G.* (1997) 16 Cal.4th 805, 821 (*Manuel G.*).)

Here, our focus is on the distinction between consensual encounters and detentions. Our Supreme Court has explained: "Consensual encounters do not trigger Fourth Amendment scrutiny. [Citation.] Unlike detentions, they require no articulable suspicion that the person has committed or is about to commit a crime. [Citation.] [¶] . . . [A] detention does not occur when a police officer merely approaches an individual on the street and asks a few questions. [Citation.] As long as a reasonable person would feel free to disregard the police and go about his or her business, the encounter is consensual and no reasonable suspicion is required on the part of the officer. Only when the officer, by means of physical force or show of authority,

in some manner restrains the individual's liberty, does a seizure occur. [Citations.]" (*Manuel G.*, *supra*, 16 Cal.4th at p. 821.) When a seizure amounts to a detention, it is unreasonable under the Fourth Amendment unless "the detaining officer can 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." (*Souza*, *supra*, 9 Cal.4th at p. 231.)

In some instances, a consensual encounter may disclose evidence supporting a detention (*Manuel G.*, *supra*, 16 Cal.4th at p. 822) or patdown search (*In re Frank V.* (1991) 233 Cal.App.3d 1232, 1237-1240).[2] Ordinarily, detentions and patdown searches require separate inquiries into their legality. (*People v. Miles* (1987) 196 Cal.App.3d 612, 616 (*Miles*).) Once a person is properly detained, an officer may conduct a patdown search for weapons only when there is reason to believe the search is necessary for the officer's protection and the protection of nearby persons. (*Terry v. Ohio*, *supra*, 392 U.S. at p. 27.) To justify the search, "[t]he officer must be able to point to specific and articulable facts together with rational inferences therefrom which reasonably support a suspicion that the suspect is

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[2] In *Terry v. Ohio* (1968) 392 U.S. 1, 27-31, the United States Supreme Court held that in some circumstances, police officers may conduct a limited search of an individual for weapons while investigating suspicious activity, even though they lack grounds to arrest the individual.

armed and dangerous. [Citations.]" (*People v. Dickey* (1994) 21 Cal.App.4th 952, 956.)

"On appeal from the denial of a suppression motion, the court reviews the evidence in a light favorable to the trial court's ruling. [Citation.] We must uphold those express or implied findings of fact by the trial court which are supported by substantial evidence and independently determine whether the facts support the court's legal conclusions." (*In re Joseph G.* (1995) 32 Cal.App.4th 1735, 1738-1739.)

B. *Evidence and Ruling*

In connection with the motion to suppress, Los Angeles County Sheriff's Department Deputy Sheriff Isidro Martinez testified that on September 18, 2015, he was on patrol in Compton in a car driven by Deputy Sheriff A. Federico. While driving north on Keene Avenue, they saw appellant and another person walking in the same direction ahead of them, and decided to conduct a consensual encounter with appellant. According to Martinez, they did not suspect that appellant was engaged in criminal activity. After Frederico stopped the patrol car behind appellant, the deputy sheriffs walked toward him. Martinez testified that he never pulled out his gun, and that the deputy sheriffs said nothing. When Martinez was approximately 10 to 15 feet behind appellant, appellant looked over his right shoulder, saw the deputy sheriffs, and appeared to be startled. As appellant turned his body, the deputy sheriffs saw a slight bulge in

appellant's waistband area that was consistent with the presence of a firearm. Appellant then walked toward the deputy sheriffs, without any orders from them or other acts intended to restrain him. Frederico patted appellant down, recovered a loaded handgun, and ordered him to approach the patrol car.

Appellant testified that on September 18, 2015, he was on Keene Avenue with a friend, who told him that "the police [were] coming." Appellant turned his head and saw the deputy sheriffs pull over and stop their car approximately 20 feet away. According to appellant, Deputy Sheriff Federico pulled out his gun and asked, "What ya'll got." When appellant said nothing, Federico left the car and searched appellant and his friend. On cross-examination, appellant stated that Federico did not point his gun at him, and reholstered it at some point. Appellant also stated that Martinez probably did not see Federico's gun because he was looking in a different direction.

In ruling on the motion to suppress, the juvenile court observed that because appellant's possession of a gun as a juvenile was unlawful, the key question was whether the deputy sheriffs' discovery of the gun was attributable to their observation of the telltale bulge in appellant's waistband, rather than a "willy nilly" search. The court declined to find that Martinez "was just lying" regarding the gun's discovery, concluding that appellant's testimony did not contradict Martinez's testimony that the search resulted from the deputy sheriffs' observation of the bulge.

C. *Analysis*

We discern no error in the trial court's ruling. As the court recognized, the motion to suppress necessitated an inquiry into whether the deputy sheriffs' contact with appellant rose to a detention before they acquired sufficient grounds to detain and search him. That inquiry requires the resolution of two issues. First, we must identify the point at which a detention occurred, that is, when "a reasonable person" would no longer have "fel[t] free to disregard the police and go about his or her business . . . ." (*Manuel G.*, *supra*, 16 Cal.4th at p. 821.) Second, we must determine whether there were adequate grounds for the detention and patdown search.

We begin with the first issue. Generally, "'a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.' [Citation.] This test assesses the coercive effect of police conduct as a whole, rather than emphasizing particular details of that conduct in isolation. [Citation.] Circumstances establishing a seizure might include any of the following: the presence of several officers, an officer's display of a weapon, some physical touching of the person, or the use of language or of a tone of voice indicating that compliance with the officer's request might be compelled. [Citations.] The officer's uncommunicated state of mind and the individual citizen's subjective belief

are irrelevant in assessing whether a seizure triggering Fourth Amendment scrutiny has occurred. [Citation.]" (*Manuel G.*, *supra*, 16 Cal.4th at p. 821, quoting *Florida v. Bostick* (1991) 501 U.S. 429, 439.)

Viewed in the light most favorable to the trial court's ruling, the evidence established that no detention occurred before the deputy sheriffs saw the telltale bulge in appellant's waistband. The evidence showed that while appellant was walking down a street, the deputy sheriffs initiated what they intended to be a consensual encounter. After stopping their car, they walked silently behind appellant, who turned, gave them a startled look, and began to approach them. In turning, appellant displayed the bulge that triggered the deputy sheriffs' suspicions that he possessed a handgun. Only then did they search appellant and order him to stay near the patrol car.

In view of this evidence, the first time a reasonable person in appellant's position would have felt restrained was after the deputy sheriffs saw the bulge; until that time, they were merely walking toward appellant. Indeed, Deputy Sheriff Martinez testified that appellant appeared to be startled by the deputy sheriffs' presence when he turned and displayed the bulge. Although appellant stated that Deputy Sheriff Federico pulled out his gun at some point, the trial court was not compelled to find that Federico did so before the deputy sheriffs observed the bulge. As explained above (see pt. B. of the Discussion, *ante*), Martinez testified that

the deputy sheriffs did nothing to restrain appellant prior to seeing the bulge.

Turning to the second issue, we agree with the trial court that the bulge adequately supported a detention and patdown search. In *Miles*, two police officers received a radio transmission that several persons were acting in a suspicious manner near a restaurant. (*Miles*, *supra*, 196 Cal.App.3d at pp. 614-615.) Upon arriving at the restaurant's parking lot, the officers saw the defendant standing next to a car. (*Id.* at p. 615.) One of the officers walked toward the defendant, who first moved away from the officer and then turned back, thereby permitting the officer to see a bulge in his coat pocket potentially produced by a weapon. (*Ibid.*) The officer directed the defendant to place his hands on his head and conducted a patdown search, which revealed a loaded revolver in the coat pocket. (*Ibid.*) After the trial court denied the defendant's motion to suppress, the appellate court affirmed, concluding that the same set of facts -- namely, the visible bulge in the defendant's coat pocket -- justified a detention based on a reasonable suspicion that the defendant unlawfully carried a concealed weapon, and a patdown search based on the same suspicion. (*Id.* at pp. 616-617.)

Appellant contends the detention and search at issue here were illegal because the deputy sheriffs had no reason to believe he was involved in criminal activity when they decided to approach him. That contention fails, as an officer's consensual encounter with a juvenile may properly

disclose facts supporting a detention, even though the officer initiated the encounter in the absence of any reasonable suspicion that the juvenile was engaged in criminal activity.

In *Manuel G.*, a deputy sheriff investigating a gang shooting tried to locate gang members in order to obtain additional information regarding the shooting. (*Manuel G.*, *supra*, 16 Cal.4th at p. 811.) While on patrol, the deputy sheriff saw the defendant juvenile walking on the street and recognized him as a gang member. (*Ibid.*) After stopping the patrol vehicle, the deputy sheriff asked the juvenile, "'Hey, can I talk to you?'" (*Ibid.*) After informing the deputy sheriff that he had no information regarding the shooting, the juvenile became irritated with the encounter and said, "'Me and my home boys are going to start killing you and your friends.'" (*Ibid.*) When the juvenile court sustained a petition charging the juvenile with making threats to deter a deputy sheriff from performing his duties (Pen. Code, § 69), the appellate court held that the deputy sheriff's encounter with the juvenile constituted an illegal detention. (*Id.* at p. 813.) Reversing the appellate court's judgment, our Supreme Court concluded that the record demonstrated no detention prior to the juvenile's threats to the deputy sheriff. (*Id.* at pp. 822-825.)

We reach a similar conclusion here. Although the record does not disclose why the deputy sheriffs decided to approach appellant, it shows that no detention or search occurred before the deputy sheriffs saw the telltale bulge in

appellant's waistband. Accordingly, the juvenile court did nor err in denying appellant's motion to suppress.

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.