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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

LUDWIG BEETHOVEN
RODRIGUEZ,

Defendant and Appellant.

B280981

(Los Angeles County
Super. Ct. No. BA442001)

APPEAL from the judgment of the Superior Court of Los Angeles County. James R. Dabney, Judge. Affirmed.

Nancy Gaynor, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Michael C. Keller and John Yang, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Following a plea of no contest, defendant and appellant Ludwig Beethoven Rodriguez was convicted of one count of assault with a firearm on a police officer in violation of Penal Code section 245, subdivision (d)(1). The sole issue on appeal is defendant's contention the trial court erred in denying his motion to suppress evidence pursuant to section 1538.5. We find no error in the court's ruling and therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In the fall of 2015, V.P.¹ was the property manager at an apartment building on South Broadway Avenue in Los Angeles. She twice spoke with police officers about multiple complaints received from tenants concerning individuals trespassing in the building's secured parking structure. The trespassers loitered in the parking area and often were seen smoking marijuana or drinking.

Luis Anchondo is a gang officer in the Newton Division of the Los Angeles Police Department. In November 2015, Officer Anchondo twice responded, with his partner Officer Cabriaes, to the apartment building on South Broadway Avenue. The building is located in an area controlled by the 50th Street gang. The officers spoke with V.P. about various tenant complaints of trespassers in the parking structure.

On December 5, 2015, Officers Anchondo and Cabriaes, in full uniform, were on a regular gang suppression patrol. They drove by the apartment building on South Broadway Avenue. Since receiving the reports of trespassers at the building, they had been stopping by to check on the building as part of their

¹ We refer to this witness by her initials to protect her privacy.

patrol, knowing it was in a gang-controlled neighborhood. The parking structure at the building had a motorized security gate for the use of residents only. However, it was possible to see into the parking structure from the street because of several window-type openings with metal security bars.

When Officers Anchondo and Cabriales arrived at the building that evening, Officer Anchondo could see a male Hispanic standing inside the parking structure through one of the barred openings. Officer Anchondo recognized him from prior personal contact as a member of the 50th Street gang who went by the moniker 211. Officer Anchondo knew 211 did not live in the apartment building. Officers Anchondo and Cabriales noticed a lobby door had been left ajar, and they were able to go inside to the parking structure after entering the lobby.

Once inside the parking structure, Officer Anchondo saw that 211 was standing close to another male Hispanic, later identified as defendant. Officer Anchondo did not know defendant.

Officer Cabriales went to check a door on the northwest side of the structure to see if there were other persons nearby. The officers were familiar with the door and the layout of the complex from their prior visits and did not want to be surprised by other individuals as they were investigating the suspected trespass. Officer Anchondo stayed with 211 and defendant. He told them to face away from him and place their hands behind their backs. 211 complied with Officer Anchondo's command.

Defendant did not comply with Officer Anchondo's command. He put his hands behind his back momentarily, but then moved them back to the front of his body. He fidgeted and appeared to bend down as if he was reaching for something.

Officer Anchondo again told defendant to keep his hands behind his back.

Officer Cabriaes returned almost immediately, with four individuals: one male and three females. The male was Steven Espinoza, a 50th Street gang member who Officer Cabriaes had previously arrested for possession of a firearm. One of the females was associated with the 50th Street gang and was called Little One. Officer Cabriaes walked the four individuals over to where Officer Anchondo was standing with 211 and defendant.

As Officer Cabriaes began a patdown search of Mr. Espinoza, defendant took off running. Officer Anchondo ran after him. When he caught up to defendant, Officer Anchondo was able to grab onto defendant's left shoulder and slow him down. At that point, defendant raised his right arm and started to turn. Officer Anchondo saw that defendant was holding a gun and was pointing it directly at him. Officer Anchondo was able to get his hand on the gun and push downward, at which point he heard a gunshot. (The preliminary hearing transcript appears to indicate that defendant shot himself in the leg.)

Defendant was charged by information with one count of assault with a firearm on a police officer (Pen. Code, § 245, subd. (d)(1); count 1), and one count of possession for sale of a controlled substance (methamphetamine) (Health & Saf. Code, § 11378; count 2). (While rendering aid to defendant after the shooting, narcotics were located in his pants.) It was further alleged defendant personally used a firearm in the commission of the offenses, and that he had suffered a prior conviction of a serious felony within the meaning of the Three Strikes law.

Defendant moved to suppress evidence pursuant to Penal Code section 1538.5, arguing that he was illegally detained by

Officer Anchondo and any evidence seized in connection with that illegal detention should be suppressed. The court denied the motion.

Thereafter, defendant pled no contest to count 1, assault with a firearm on a police officer, and admitted the personal use allegation. Count 2 was dismissed. The court granted the prosecution's motion to dismiss the strike prior on the grounds that further research had shown the conviction did not qualify as a strike. Defendant was placed on three years probation with credit for time served.

This appeal followed.

DISCUSSION

In reviewing an order denying a motion to suppress pursuant to Penal Code section 1538.5, we “uphold those factual findings of the trial court that are supported by substantial evidence.” (*People v. Camacho* (2000) 23 Cal.4th 824, 830.) We independently review the question whether the challenged search or seizure conformed to constitutional standards of reasonableness. (*Ibid.*) Our review is governed by federal constitutional standards. (*People v. Rogers* (2009) 46 Cal.4th 1136, 1156, fn. 8; *People v. Chung* (2010) 195 Cal.App.4th 721, 727.)

Law enforcement officers may reasonably stop and detain individuals without offending the Fourth Amendment where there are facts supporting an objectively reasonable suspicion that criminal activity has or is about to occur. (*Terry v. Ohio* (1968) 392 U.S. 1, 30-31.) “[W]hen circumstances are ‘consistent with criminal activity,’ they permit--even demand--an investigation” [Citation.] A different result is not warranted merely because circumstances known to an officer may also be

“consistent with lawful activity.”’ [Citation.] As we said: ‘The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, *the principal function of [police] investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal . . .*’” (*People v. Souza* (1994) 9 Cal.4th 224, 233, italics added (*Souza*).)

In reviewing whether there was reasonable suspicion for a detention, courts must consider the totality of circumstances confronting the detaining officer. (*United States v. Arvizu* (2002) 534 U.S. 266, 273.) The Supreme Court explained that “[t]his 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.’” (*Ibid.*)

Numerous factors may be relevant to the inquiry. “An area’s reputation for criminal activity is an appropriate consideration in assessing whether an investigative detention is reasonable under the Fourth Amendment.” (*Souza, supra*, 9 Cal.4th at p. 240.) “The time of night is another pertinent factor in assessing the validity of a detention.” (*Id.* at p. 241.) Whether or not an individual displays nervous or evasive behavior, including fleeing from law enforcement, is also appropriately considered. (*Illinois v. Wardlow* (2000) 528 U.S. 119, 124.)

Here, the evidence demonstrated that Officer Anchondo and his partner were gang officers, familiar with the neighborhood gangs and their criminal activities, including the 50th Street gang which controlled the area where the building was located. They recently had been called out to the building to

respond to complaints of trespassing and loitering, with possible drug use, in the secured parking structure. They began including the building in their regular gang suppression patrols.

When they drove by on the evening of December 5, 2015, Officer Anchondo could see a known member of the 50th Street gang standing in the parking structure. He knew the gang member, who used the moniker 211, did not reside at the building. A door to the building had been left ajar. When Officer Anchondo and his partner went inside, they saw 211 standing near defendant.

Given the officers' knowledge of the area, the time of night, the prior reports of criminal trespass and loitering at the building, and the presence of a known gang member who did not reside in the building, there was a reasonable basis for Officer Anchondo to detain defendant in order to determine the nature of 211 and defendant's presence in the parking structure.

Indeed, there are more facts here to support reasonable suspicion than were found adequate in *People v. Conway* (1994) 25 Cal.App.4th 385. There, the detaining officer had received a report of a burglary in progress in the neighborhood he was patrolling, but had no description of the suspects and did not know if they were in a car. Nevertheless, the court found that the officer's detention of two individuals in a car was justified, explaining as follows: "Less than two minutes after receiving the report of a burglary in progress, he saw a car leaving the area of the reported burglary. The time was approximately 3 a.m., and the officer saw no one else in the area. Under the circumstances, it was objectively reasonable for the officer to suspect the car's occupants were involved in the burglary. [Citations.] [¶] We recognize that driving in a residential area early in the morning

is consistent with lawful activity. ‘But the possibility that the circumstances are consistent with lawful activity does not render a detention invalid, where the circumstances also raise a reasonable suspicion of criminal activity. The public rightfully expects a police officer to inquire into such circumstances; indeed the principal function of the investigative stop is to resolve that ambiguity.’ ” (*Id.* at p. 390.)

Defendant contends he was illegally detained when Officer Anchondo told him to put his hands behind his back because the officers had no reason to suspect he had done anything unlawful; and that the timing of the detention is significant because flight may not be used as a justification for a detention that was not founded on reasonable suspicion.

Having found there was reasonable suspicion for a detention when Officer Anchondo first saw defendant with 211 in the parking structure, we address this contention only briefly. We find that Officer Anchondo *attempted* to detain defendant at the point he ordered defendant to put his hands behind his back, but defendant did not comply or submit to the officer’s show of authority. Under applicable law, there was no detention at that point. (*People v. Brown* (2015) 61 Cal.4th 968, 974 [“[A] person is seized ‘if “in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave,” ’ or ‘ “otherwise terminate the encounter” ’ [citation], and if the person actually submits to the show of authority.”]; accord, *California v. Hodari D.* (1991) 499 U.S. 621, 626 [concluding that, for Fourth Amendment purposes, a seizure does not occur if the subject does not yield to a show of authority].) Here, defendant put his hands behind his back briefly, but then moved them back to the front of his body,

reached down like he was going to grab something, and continued fidgeting despite additional commands by Officer Anchondo. There is no evidence defendant ever submitted to Officer Anchondo's commands.

Rather, when Officer Cabriaes returned with the other four individuals found loitering, defendant fled. His flight, following a lawful effort by Officer Anchondo to detain him, bolsters the fact there was reasonable suspicion to detain in the first instance.

DISPOSITION

The judgment of conviction is affirmed.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

FLIER, J.