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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re R.M., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B282441 (Super. Ct. No. TJ22641) (Los Angeles County)
THE PEOPLE, Plaintiff and Respondent, v. R.M., Defendant and Appellant.	

R.M. appeals an order adjudicating him a ward of the court (Welf. & Inst. Code, § 602)[1] after the juvenile court found true allegations that he committed four acts of vandalism (Pen. Code, §§ 594.3, subd. (a), 594, subd. (a)). He contends the court erred (1) when it denied his motion to quash a search and arrest

[1] Further unspecified statutory references are to the Welfare and Institutions Code.

warrant; and (2) when it did not determine his suitability for deferred entry of judgment. We conditionally reverse and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

Sheriff's Deputy Vincent Cisneros was working at a Metro train station when he saw R.M. walking with two other young men. One of R.M.'s companions took out a marker and began to "graffiti" a display. R.M. and the other individual saw that deputies were present, and they "began to distance themselves" from the scene.

Cisneros detained the three men. Cisneros said he detained R.M. because vandalism cases "always" involve a "lookout." Cisneros asked R.M. for his name and asked if he had a moniker. R.M. said his moniker was "Done" and that he was a member of "Clown and Kings." R.M. showed Cisneros pictures on his cell phone that depicted graffiti of the word "Done." The detention lasted "a few minutes." Cisneros concluded that R.M. was not involved in the crime and allowed him to leave.

Several months later, deputies investigated vandalism acts in which "Done" and "C9K" (a symbol for Clown and Kings) were painted or etched on property. The deputies obtained a warrant to arrest R.M. and search his home. The affidavit in support of the warrant included R.M.'s statements to Cisneros admitting his moniker and his association with Clown and Kings.

Before filing the juvenile petition (§ 602), the prosecutor determined R.M. eligible for deferred entry of judgment (§ 790). The prosecutor used a Judicial Council form entitled "Citation and Written Notification For Deferred Entry of Judgment" (Citation and Written Notification) to notify R.M. of

his eligibility, but he did not complete the information on the form regarding the date, time, and location of a suitability hearing for deferred entry. The court did not hold a suitability hearing or otherwise determine R.M.'s suitability for deferred entry. R.M. denied the allegations in the petition, and the court held an adjudication hearing.

DISCUSSION

Motion to Quash

R.M. contends the juvenile court erred when it denied his motion to quash the arrest and search warrant because probable cause for the warrant was based on information obtained during an unlawful detention. We disagree because the detention was lawful.

An officer may conduct a brief, investigatory stop that is consistent with the Fourth Amendment when the officer has "reasonable, articulable suspicion that criminal activity is afoot." (*Illinois v. Wardlow* (2000) 528 U.S. 119, 123.) We exercise our independent judgment to determine whether on the facts presented, the detention was reasonable under the Fourth Amendment. We defer to the juvenile court's factual findings if supported by substantial evidence. (*Robey v. Superior Court* (2013) 56 Cal.4th 1218, 1223.)

Cisneros had reasonable suspicion to detain R.M. The deputy saw R.M.'s companion begin to graffiti a display, and he reasonably suspected that R.M. was a "lookout." An officer may "'draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them.'" (*People v. Hernandez* (2008) 45 Cal.4th, 295, 300.) Moreover, R.M. walked away from the scene once he noticed deputies were present. Evasive behavior is a

relevant factor that supports reasonable suspicion. (*In re Stephen L.* (1984) 162 Cal.App.3d 257, 259-260 (*Stephen L.*).)

This case is like *Stephen L.,* in which there was reasonable suspicion to detain a minor, who was in a group of gang members near a wall of "'freshly painted'" graffiti and began to walk away when officers approached. (*Stephen L.*, *supra*, 162 Cal.App.3d at pp. 259-260.)

R.M. argues the facts were insufficient to justify his detention. But he analyzes each fact separately. We do not consider each fact separately; we consider the totality of circumstances. (*People v. Souza* (1994) 9 Cal.4th 224, 230.)

Nor is this case like *Cornell v. City & County of San Francisco* (2017) 17 Cal.App.5th 766, where reasonable suspicion was lacking because police merely observed a jogger who ran away from them as they approached one of the most heavily used public recreation areas in San Francisco in broad daylight. Unlike the circumstances present here, police in the *Cornell* case were unaware of any facts connecting the suspect to criminal activity of any sort, and did not observe criminal activity by one of the suspect's companions. Based on the totality of circumstances, Cisneros had reasonable suspicion to detain R.M.[2]

Deferred Entry

R.M. contends that remand is necessary because (1) the prosecutor provided "insufficient notice" of his eligibility for deferred entry and (2) the juvenile court did not determine his suitability for deferred entry. (*In re Trenton D.* (2015) 242

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[2] Because we conclude the deputies lawfully detained R.M., we do not address his contention that the deputies did not rely in good faith on the arrest and search warrant.

Cal.App.4th 1319, 1321-1322 (*Trenton D.*).) We agree and conditionally remand for further proceedings.

Deferred entry provisions allow a minor who admits the allegations of the juvenile petition and completes probation to have the allegations dismissed and any record of the arrest sealed. (§ 793, subd. (c).) A grant of deferred entry involves two prerequisites: eligibility and suitability. (*In re Sergio R.* (2003) 106 Cal.App.4th 597, 607, fn. 10.) The prosecutor is required to determine a minor's eligibility for deferred entry. (§ 790.) If the minor is eligible, the prosecutor must notify the minor of his or her eligibility. (§ 791; *In re C.W.* (2012) 208 Cal.App.4th 654, 659-660 (*C.W.*).) After the minor is notified, the juvenile court must determine the minor's suitability for deferred entry. (*Trenton D.*, *supra*, 242 Cal.App.4th at p. 1325.)

The prosecutor and the juvenile court did not follow proper procedures. The prosecutor provided insufficient notice of R.M.'s eligibility. He was required to provide R.M. with "written notification" of his eligibility, which must include specific explanations and advisements listed in section 791. (§ 791.) But the prosecutor did not meet these requirements because he did not complete the information on the Citation and Written Notification form regarding the date, time, or location of the suitability hearing.[3] (*Trenton D.*, *supra*, 242 Cal.App.4th at pp. 1324, 1326.)

Moreover, the juvenile court was required to issue the Citation and Written Notification to the minor's parents through

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[3] We also note the prosecutor did not check a box on another form entitled "Determination of Eligibility" to show he attached the Citation and Written Notification form as required by law.

personal service before the suitability hearing. (§ 792; Cal. Rules of Court,[4] rule 5.800(c).) Nothing in the record shows that R.M.'s parents were personally served with the form.

The juvenile court also did not determine R.M.'s suitability. The court must inquire into a minor's suitability and exercise its discretion to make that determination based on whether he or she would "derive benefit from education, treatment, and rehabilitation" efforts rather than a more restrictive commitment. (*In re Luis B.* (2006) 142 Cal.App.4th 1117, 1123 (*Luis B.*); rule 5.800(b).) Because the court did not make that determination here, remand is necessary. (*Luis B.*, at p. 1123.)

This case is like *Trenton D.*, where remand was required because the prosecutor did not provide any information regarding the minor's suitability hearing, the parents were not properly served with the Citation and Written Notification, and the juvenile court did not determine his suitability. (*Trenton D.*, *supra*, 242 Cal.App.4th pp. 1325-1326; see also *C.W.*, *supra*, 208 Cal.App.4th at pp. 660-661 [remand where the prosecutor did not file a Citation and Written Notification and the juvenile court did not determine suitability].)

Attorney General argues that the juvenile court was excused from its duty to determine R.M.'s suitability for deferred entry because R.M. denied the juvenile petition and had an adjudication hearing. (*In re Usef S.* (2008) 160 Cal.App.4th 276, 286; *In re Kenneth J.* (2008) 158 Cal.App.4th 973, 979-980.) We agree with *Trenton D.*, *supra*, 242 Cal.App.4th at pages 1325-1326, which held that a juvenile court is not excused from "its

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[4] Further unspecified rule references are to the California Rules of Court.

obligations" to determine a minor's suitability if the minor received insufficient notice of eligibility.

The Attorney General also argues that under Evidence Code section 664, the court should presume that "official duty [was] regularly performed" and therefore that R.M. was sufficiently noticed of his eligibility for deferred entry. But the presumption is rebutted here because the record shows the prosecutor did not notify R.M. of the date, time, and location of his suitability hearing, and his parents were not personally served with a Citation and Written Notification. (See *Trenton D.*, *supra*, 242 Cal.App.4th at pp. 1325-1326; *C.W.*, *supra*, 208 Cal.App.4th at p. 660.)

Because the prosecutor did not provide sufficient notice of R.M.'s eligibility and the juvenile court did not determine R.M.'s suitability for deferred entry, we remand. (*Trenton D.*, *supra*, 242 Cal.App.4th at p. 1327; *Luis B.*, *supra*, 142 Cal.App.4th at p. 1123.)

DISPOSITION

We conditionally reverse the juvenile court's disposition order and remand to the court for further proceedings that comply with the deferred entry procedures and to reinstate the previously entered findings and orders only if the minor is found unsuitable for deferred entry. (*Trenton D.*, *supra*, 242 Cal.App.4th at pp. 1327-1328.)

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

YEGAN, Acting P. J.

PERREN, J.

Gibson W. Lee, Judge

Superior Court County of Los Angeles

Esther R. Sorkin, under appointment by the Court of Appeal, for Defendant Appellant.

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