Filed 5/16/19 In re J.P. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re J.P., a Person Coming Under the Juvenile Court Law. THE PEOPLE, Plaintiff and Respondent, v. J.P, Defendant and Appellant.	B289825 (Los Angeles County Super. Ct. No. TJ22986)

APPEAL from an order of the Superior Court of Los Angeles County. Catherine J. Pratt, Judge. Affirmed.

Holly Jackson for Defendant and Appellant J.P.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Margaret E. Maxwell, Supervising Deputy Attorney General. Thomas C. Hsieh, Deputy Attorney General, for Plaintiff and Respondent.

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A juvenile who was adjudicated guilty of possessing a firearm and live ammunition appeals the juvenile court's denial of his motion to suppress. We conclude there was no error and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

At around 3 a.m. on January 30, 2018, two Los Angeles Police Department officers were on patrol in a black-and-white police car in a high-crime neighborhood that had recently been the site of burglaries, robberies, assaults with a deadly weapon, and shootings. The officers happened upon a black Toyota Avalon with "multiple occupants" parked in a well-lit and public alleyway. Suspecting that the car might be stolen, the officers pulled into the alley so the patrol car was hood to hood with the Avalon, stopped 15 feet away from the Avalon, and activated their lights. As they were running the car's license plate, one of the officers noticed that the car was filled with smoke and suspected that the occupants might be "hotboxing" marijuana in order to maximize their "high."

Although the officers' check revealed that the Avalon was not stolen, the officers still wanted to investigate whether the occupants were smoking marijuana in a public place, which is unlawful. One of the officers got out of the patrol car and approached the Avalon. As he did, the Avalon's driver opened the

door, smoke billowed out, and the officer was hit with a "strong odor of marijuana."

At that point, the officer could see 17-year-old J.P. (defendant) in the front passenger seat. As the officer continued to approach the Avalon, defendant made "furtive movements under his seat with his left hand." The officer twice asked defendant to stop, but he disregarded those orders and continued fiddling with something under the seat. Concerned by defendant's movements, the officer called for back-up and ordered all five occupants out of the car; each was patted down and placed in handcuffs.

The officer then searched the passenger compartment of the car, and "directly under" the front passenger's seat found a loaded blue steel semiautomatic handgun.

II. Procedural Background

The People filed a petition with the juvenile court alleging that defendant, while a minor, (1) possessed a firearm (Pen. Code, § 29610), and (2) possessed live ammunition (§ 29650). The first offense is a felony; the second, a misdemeanor.

Defendant filed a motion to suppress the gun and ammunition. The juvenile court conducted an evidentiary hearing at which one of the two officers testified. The court ultimately denied the motion.

Based on the officer's testimony, the juvenile court sustained both allegations in the petition and declared defendant to be a ward of the court. The court placed defendant on probation.

Defendant filed this timely appeal.

DISCUSSION

Defendant argues that the juvenile court erred in denying his motion to suppress. In reviewing such a ruling, we review the court's factual findings for substantial evidence but independently review its application of the law to those findings. (*People v. Brown* (2015) 61 Cal.4th 968, 975; *In re H.R.* (2008) 167 Cal.App.4th 136, 142 [applying these standards to suppression motions in juvenile court].)

The juvenile court did not err in denying defendant's motion to suppress because each of the officers' actions leading to the seizure of the gun and ammunition complied with the Fourth Amendment.

The officers' first act of detaining the occupants of the Avalon was lawful. The officers "detained" the occupants under the Fourth Amendment when they pulled the patrol car hood to hood with the Avalon and activated its lights. (*Brown*, *supra*, 61 Cal.4th at p. 978; *People v. Bailey* (1985) 176 Cal.App.3d 402, 404-405.) Law enforcement may "detain" a person if they have "reasonable suspicion" that criminal activity may be afoot. (*People v. Lindsey* (2007) 148 Cal.App.4th 1390, 1395-1396; *Terry v. Ohio* (1968) 392 U.S. 1, 30.) Here, at the time the officers activated their patrol car's lights, the officers had reasonable suspicion to believe that the car was stolen based on finding the car with several occupants in an alleyway in the middle of a crime-ridden neighborhood at 3 a.m. As our Supreme Court has noted, "'Three a.m., . . . is both a late and unusual hour for anyone to be in attendance at an outdoor social gathering.'" (*People v. Souza* (1994) 9 Cal.4th 224, 241.) Coupled with the nature of the neighborhood, this constituted reasonable cause (albeit, barely) to detain the car's occupants to run a quick check

of the car's plates. (*Id.* [holding that police had reasonable suspicion to detain people standing near a parked car at 3 a.m. in a crime-ridden neighborhood, particularly when those persons acted evasively when police arrived.) What is more, while the officers investigated whether the car was stolen, they developed reasonable suspicion to believe that the occupants of the Avalon might be smoking marijuana in a public place, in violation of Health and Safety Code section 11362.3, subdivision (a)(1). This suspicion was reasonably based on the smoke inside the Avalon, the officers' familiarity with "hotboxing," and the time and location of the encounter. That the marijuana crime is an infraction is of no moment because a detention may be based upon reasonable suspicion that a person is committing an infraction. (*People v. McGaughran* (1979) 25 Cal.3d 577, 583-584.)

The officers' second act in ordering the Avalon's occupants out of the Avalon was lawful. Law enforcement may order all of the occupants of a car out of a "lawfully stopped" vehicle "as a matter of course." (*Pennsylvania v. Mimms* (1977) 434 U.S. 106, 111, fn. 6; *People v. Vibanco* (2007) 151 Cal.App.4th 1, 9-10.) By the time the officer ordered the occupants to get out of the Avalon, the Avalon was lawfully stopped—based on *both* the smoky interior of the Avalon *and* the "strong odor" of marijuana that wafted out of the car when the Avalon's driver got out on his own. Defendant's fiddling with the underside of his seat despite repeated orders to stop provided additional grounds to believe that further drugs or other contraband was inside the Avalon and warranted detention of its occupants.

The officers' final act in searching the Avalon was lawful. Law enforcement officers may conduct a limited "patdown"

search of the passenger compartment of a car for weapons if they harbor a reasonable suspicion that a recent occupant of the car is dangerous and may gain immediate control of weapons, even if the occupant is outside of the car and "nominally under the control of law enforcement officers." (*Michigan v. Long* (1983) 463 U.S. 1032, 1047, 1049.; *People v. Bush* (2001) 88 Cal.App.4th 1048, 1051-1052.) A suspect's act in furtively reaching for an area that can contain a weapon despite police orders not to so reach can provide reasonable suspicion for a "patdown" search for weapons, at least when the suspect does so in a crime-ridden neighborhood at night. (*In re Frank V.* (1991) 233 Cal.App.3d 1232, 1240-1241 (*Frank V.*); *People v. Fews* (2018) 27 Cal.App.5th 553, 560 (*Fews*).)

Defendant attacks the legality of the officers' first and final acts.

With respect to the legality of the detention (the first act), defendant offers four sets of arguments. First, he argues that the officers' reasonable suspicion was (1) not based upon seeing smoke inside the Avalon because the officers did not *see* that smoke until after they determined the car was not stolen, (2) improperly based upon the location of the Avalon in a crime-ridden neighborhood alone (*Illinois v. Wardlow* (2000) 528 U.S. 119, 124 ["An individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime."]), (3) improperly based on the "strong odor" of marijuana, which the officer did not smell until *after* the Avalon's occupants were detained, and (4) insufficient because the smoke could have been cigarette smoke. This argument is not supported by the record. Contrary to what defendant asserts

without citation in his briefing, the record indicates that one of the officers saw the smoke in the Avalon while the officers were still trying to determine whether the Avalon was stolen (and thus while the officers still entertained a reasonable suspicion that the Avalon might be stolen). And, as explained above, the officers' reasonable suspicion that the Avalon might be stolen and that its occupants might be hotboxing were based on factors *in addition* to the location of the Avalon; in other words, that suspicion was not based solely upon the presence of the Avalon in a crime-ridden neighborhood, and it was not based at all on the smell of marijuana that came later. That the smoke might have come from cigarettes instead of marijuana did not negate reasonable suspicion because the "possibility of an innocent explanation for the possession of marijuana 'does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct.'" (*In re Tony C.* (1978) 21 Cal.3d 888, 894; *Fews*, *supra*, 27 Cal.App.5th at p. 561.)

Second, defendant argues that it is improper to focus on whether there was reasonable suspicion to believe the Avalon's occupants were smoking marijuana in a public place because the officers were actually more concerned with whether the Avalon was stolen. This argument ignores that the officers *also* saw smoke inside the Avalon while the occupants were properly detained and that "[t]he officer[s'] subjective motivation is irrelevant." (*Brigham City v. Stuart* (2006) 547 U.S. 398, 404.) What matters for Fourth Amendment purposes is whether the facts objectively justified their acts (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 145); here, they did.

Third, defendant argues that there was no reasonable suspicion to believe the Avalon's occupants were "[s]mok[ing]"

marijuana "in a public place" in violation of Health and Safety Code section 11362.3, subdivision (a)(1), because a well-lit alleyway is not a "public setting." This argument misconstrues the pertinent statute and ignores the uncontroverted evidence from the testifying officer that the alleyway was a public place.

Fourth, defendant argues that the officers could not harbor a reasonable suspicion that the Avalon's occupants (1) were "riding" or "driving" while using marijuana (as prohibited by Health and Safety Code section 11362.3, subds. (a)(7) & (a)(8)) because the Avalon's engine was never on, or (2) were "doing anything illegal." The argument ignores that reasonable suspicion of a single crime is enough and that using marijuana in a public place *is* illegal.

With respect to the "patdown" search of the Avalon (the final act), defendant offers two arguments. First, he argues that his furtive movements were insufficient by themselves to create a reasonable suspicion that he was armed and dangerous. For support, he cites *In re H.M.* (2008) 167 Cal.App.4th 136, 144. However, *In re H.M.* follows the same rule as *Fews*, *supra*, 27 Cal.App.5th at p. 560 and *Frank V.*, *supra*, 233 Cal.App.3d at pp. 1240-1241—namely, that furtive movements alone may not be enough, but that such movements in conjunction with other factors (such as refusal to obey orders from law enforcement and the setting of the encounter) *can* be enough. These further factors are present here. Second, defendant argues that the search of the car cannot be justified as a search directed toward uncovering marijuana. We need not consider that argument because a single valid basis for a search is sufficient to uphold that search.

DISPOSITION

Based on the foregoing conclusions, the order is affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ