Filed 10/4/16 In re Anthony R. CA2/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re ANTHONY R., a Person Coming Under the Juvenile Court Law.	B268761 (Los Angeles County Super. Ct. No. NJ27878)
THE PEOPLE, Plaintiff and Respondent, v. ANTHONY R., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, John C. Lawson II, Judge. Affirmed with directions.

Bruce G. Finebaum, 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, Stephanie C. Brenan and Charles S. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

Anthony R. contends that a deputy sheriff unlawfully detained and searched him. We disagree and affirm, but also order that the clerk's order be corrected to reflect the juvenile court's award of 33 days of predisposition credit.

BACKGROUND

On October 14, 2015, the Los Angeles County District Attorney filed a petition under Welfare and Institutions Code section 602, alleging Anthony R., who was 17 years old, had committed three offenses: possession of a firearm by a minor (Pen. Code, § 29610),[1] carrying a loaded firearm in public (§ 25850, subd. (a)) and possession of live ammunition by a minor. (§ 29650.)

At the November 5, 2015 hearing on Anthony's motion to suppress evidence (Welf. & Inst. Code, § 700.1), Los Angeles County Deputy Sheriff Jonathan Alcala, assigned to the Compton Sheriff's Station as a patrol officer, testified that, on October 10, 2015, about 2:30 p.m., he was driving his patrol car near Compton Boulevard and Willowbrook Avenue, a high-crime area which constitutes the border between two gang areas. He heard someone yell profanities in his direction and saw a group of three to five individuals on the corner. Given his training and experience of nine years as a deputy sheriff, he believed that the shouted obscenities meant that a fight had occurred, would occur, or was occurring at that moment. He reversed his patrol car, but by the time he stopped his car, only two people remained on the corner. Deputy Alcala asked them if they were okay and, "right after that, I said, 'Who said, "fuckin' bitch"?' And, 'Who was yelling out all those cuss words?'" They denied having shouted, but looked toward Anthony, who was walking away. Anthony looked over his shoulder numerous times at Deputy Alcala and then veered off the sidewalk onto a lawn. In his experience, gang members tend to "disassociate" from officers to avoid arrest and to dispose of weapons or contraband. Deputy Alcala drove to Anthony, stopped his car, and got out.

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[1] Unless otherwise noted, further statutory references are to the Penal Code.

Deputy Alcala asked Anthony "if he were okay" and "if he would speak to me." Anthony replied, "Yes," and then spontaneously offered, "Hey, I'm not the one that said, 'fuckin' bitch.'" The deputy asked Anthony "if he could come over here. I then asked him, 'Hey, can I search you for my safety, just for weapons?' Anthony replied, 'Yes.'"

The deputy testified that he relied on several factors that led him to believe that Anthony was armed: Anthony left the group of individuals as the deputy drove the patrol car toward them; Anthony kept looking back in the deputy's direction as he walked away; and Anthony looked nervous, would not meet the deputy's eyes and was sweating profusely.

Deputy Alcala conducted a patdown search over Anthony's clothing and discovered a .25 caliber semiautomatic firearm in Anthony's right front pants pocket. The entire encounter, from the deputy's exit from the patrol car to the completion of the patdown search, took place in about one minute. Deputy Alcala inspected the firearm and found it was loaded with one round in the chamber and four rounds in the magazine.

After counsel argued, the juvenile court denied Anthony's motion to suppress evidence (Welf. & Inst. Code, § 700.1) and then Anthony's motion to dismiss. (Welf. & Inst. Code, § 701.1.) The juvenile court immediately proceeded to adjudication; it found the first two counts true (felony possession of a firearm by a minor (§ 29610)[2] and misdemeanor carrying a loaded firearm in public (§ 25850, subd. (a))[3] and sustained the petition as to those two allegations.

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[2] "A minor shall not possess a pistol, revolver, or other firearm capable of being concealed upon the person." (§ 29610.)

[3] "A person is guilty of carrying a loaded firearm when the person carries a loaded firearm on the person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory." (§ 25850, subd. (a).)

On November 12, 2015, the juvenile court conducted a disposition hearing and found Anthony to be a person described by Welfare and Institutions Code section 602.[4] The juvenile court ordered placement in camp for seven to nine months, with Anthony to obtain a high school diploma and to participate in tutoring, vocational activities, and substance abuse and anger management counseling while in camp. The juvenile court ordered Anthony to pay a fine of $100 and perform 120 hours of community service.[5] The court awarded predisposition credit of 33 days.

Anthony timely appealed.

DISCUSSION

I

Anthony contends that the court erred in denying his motion to suppress "in that there were no objectively sufficient circumstances upon which to initiate the detention and subsequent pat-down search."[6] We disagree and hold that Deputy Alcala did not

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[4] "[A]ny person who is under 18 years of age when he or she violates any law of this state . . . defining crime . . . is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court." (Welf. & Inst. Code, § 602, subd. (a).)

[5] This was not the first time that a petition alleging that Anthony had committed a felony had been found true. On May 8, 2015, Anthony had been declared a ward of the court and placed home on probation after the juvenile court found true a petition that Anthony committed a first degree residential burglary.

[6] "Any motion to suppress as evidence any tangible or intangible thing obtained as a result of an unlawful search or seizure shall be heard prior to the attachment of jeopardy . . . ." (Welf. & Inst. Code, § 700.1.)

violate Anthony's Fourth Amendment[7] rights in questioning Anthony and then performing a consensual patdown search.[8]

Deputy Alcala did not detain Anthony when he asked Anthony if he were okay. "An officer may approach a person in a public place and ask if the person is willing to answer questions. If the person voluntarily answers, those responses, and the officer's observations, are admissible in a criminal prosecution." (*People v. Brown* (2015) 61 Cal.4th 968, 974.) "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." (*In re Manuel G.* (1997) 16 Cal.4th 805, 821.)

Deputy Alcala's encounter with Anthony was consensual and not a detention.[9] An encounter between an officer and a member of the public constitutes a detention when "a reasonable person would have believed that he [or she] was not free to leave. Examples of circumstances that might indicate a seizure, even where the person did not attempt to

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[7] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." (U.S. Const., 4th Amend.)

[8] Anthony does not challenge the denial of his motion to dismiss under Welfare and Institutions Code section 701.1, which provides: "At the hearing, the court, on motion of the minor or on its own motion, shall order that the petition be dismissed and that the minor be discharged from any detention or restriction therefore ordered, after the presentation of evidence on behalf of the petitioner has been closed, if the court, upon weighing the evidence then before it, finds that the minor is not a person described by Section 601 or 602. If such a motion at the close of evidence offered by the petitioner is not granted, the minor may offer evidence without first having reserved that right."

[9] We are not bound by the deputy district attorney's use of the word, "detention," during closing argument. We note that the prosecutor set forth facts during argument that support a consensual encounter: "How is a police officer supposed to find out if a crime has occurred without investigating? He's entitled to investigate. He did that. He then asked the minor if he could search him, did a pat-down for weapons, and he found a weapon." We further note that the juvenile court did not characterize the encounter as either consensual or as a detention when denying the motion.

leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." (*U.S. v. Mendenhall* (1980) 446 U.S. 544, 554, fn. omitted.)

Anthony, like the two individuals with whom the deputy had just spoken, was free to leave.[10] The deputy was alone, did not use the patrol car's siren, did not touch Anthony and did not display his weapon. His opening question was not confrontational; he simply asked Anthony if he were okay. The encounter took one minute. Deputy Alcala did not ask Anthony to "come here" until Anthony spontaneously offered, "Hey, I'm not the one that said, 'fuckin' bitch.'"

Even if we were to consider the encounter as a detention, "specific, articulable facts" exist to have supported a detention. (*People v. Casares* (2016) 62 Cal.4th 808, 837-838; *People v. Souza* (1994) 9 Cal.4th 224, 231.) The encounter took place in a high-crime area on the border between two gang areas. Deputy Alcala heard obscenities shouted and knew that obscenities signal a fight. Anthony was the only one of the group of individuals from which the obscenities emanated who walked away as the deputy drove his patrol car toward them.[11] The two remaining individuals indicated, with looks in his direction, that Anthony was the one who had yelled. Deputy Alcala saw Anthony look over his shoulder at the deputy numerous times and change direction as he was walking away. The deputy knew that gang members avoid police when they are armed or are carrying contraband. When they came face-to-face, Deputy Alcala observed that

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[10] Presumably, Anthony saw that the deputy had only briefly questioned the two other individuals and could have reasonably inferred that he, too, would be questioned only briefly.

[11] "[F]light in response to the appearance of a uniformed officer or a marked patrol car ordinarily is behavior that police may legitimately regard as suspicious, and therefore also can be a key factor in establishing reasonable cause to detain in a particular case." (*People v. Souza*, *supra*, 9 Cal.4th at p. 227.)

Anthony was nervous and sweating profusely, and he avoided the deputy's eyes. Anthony spontaneously offered that he was not the one who had yelled the obscenity.

The subsequent patdown search was lawful. "[T]he question whether a consent to a search was in fact 'voluntary' or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances." (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 227.) The person searched must give consent freely and voluntarily and not solely "'in submission to a claim of lawful authority.'" (*People v. Boyer* (2006) 38 Cal.4th 412, 445-446.) Again, Officer Alcala did not use his siren or show his weapon; he expressed concern for Anthony's welfare in asking whether the youth was "okay"; the deputy did nothing that reasonably could be interpreted as coercive. The deputy simply asked Anthony's permission to conduct a patdown search for weapons. Anthony freely and voluntarily agreed. Deputy Alcala did not violate Anthony's Fourth Amendment rights in questioning Anthony and then performing a consensual patdown search.

II

At Anthony's disposition hearing, the juvenile court awarded him 33 days of predisposition credit. The clerk's minute order shows 20 days rather than the 33 days actually awarded. Accordingly, we order the clerk to correct the order to show 33 days of credit.

DISPOSITION

The juvenile court is ordered to correct the clerk's order to reflect 33 days of predisposition credit. The order is otherwise affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

WE CONCUR:

ROTHSCHILD, P. J.

JOHNSON, J.