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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re T.T., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

T.T.,

Defendant and Appellant.

B269130

(Los Angeles County
Super. Ct. No. NJ27832)

APPEAL from an order of the Superior Court of
Los Angeles County, Steven R. Klaif, Juvenile Court Referee.
Affirmed.

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, Scott A. Taryle and Eric J. Kohm, Deputy
Attorneys General, for Plaintiff and Respondent.

T.T., a minor, appeals from the order declaring him a ward of the court (Welf. & Inst. Code, § 602) entered following the juvenile court's finding he carried a loaded handgun and was a minor in possession of a concealable firearm. T.T. contends the trial court erred by denying his motion to suppress evidence. Discerning no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On October 23, 2015, the People filed a petition under Welfare and Institutions Code section 602 alleging that T.T., a minor, had possessed a concealable firearm (Pen. Code, § 29610) and had carried a loaded, unregistered firearm (Pen. Code, § 25850, subd. (a)).

On October 27, 2015, T.T. filed a motion seeking to suppress evidence pursuant to Welfare and Institutions Code section 700.1.

At a consolidated hearing on both the suppression motion and the October 23, 2015 petition, the following evidence was adduced. Los Angeles County Sheriff's Department Detective Kevin Hom worked as a gang investigator with the Operation Safe Streets Bureau in the City of Carson. He was familiar with the Scottsdale Piru criminal street gang, which was active in Carson. The gang's claimed territory was bordered by 230th Street and Sepulveda Boulevard to the north and south, and by Banning and Avalon Boulevards to the east and west. The gang's color was burgundy red, and its acronym was "SDP."

According to Hom, who had completed training on criminal street gangs, gang members are "frequently very dangerous, they're armed, they carry knives, they carry guns. We need to keep an eye on them to make sure they don't reach for those during apprehension or detention." It is common for older gang members to order younger members to hold weapons and

narcotics because the consequences for minors are less serious than for adults if they are caught. To demonstrate their determination to join a gang, juveniles typically “‘put in work’” by committing crimes, beginning with petty crimes such as vandalism or graffiti, and progressing to more serious offenses such as carrying narcotics or firearms and shooting at people.

On October 17, 2015, at approximately 4:30 p.m., a 15-year-old member of the SDP gang was murdered in a gang-related shooting at a USA gas station near Avalon and Sepulveda Boulevards, within the area claimed as the SDP gang’s territory. Members of a Crips gang were suspected of committing the murder. In stationhouse briefings, deputies were alerted to “keep an eye out for escalation of retaliation.” Hom explained that in order for the SDP gang to avoid looking weak, members “needed to show dominance. Since the gang member was killed in their own territory, they had to go ahead and show force and back it up and prove that they owned this territory, and they were not going to be punked, in street terms.”

Between October 17 and 21, 2015, Hom observed an increase in the number of gang members loitering at the USA gas station. There was an “abundance” of burgundy red SDP graffiti in the area, including the victim’s moniker, “Rest in Peace,” and the acronym “SDP.” There was also a letter “C” that had been crossed out, signifying “a strike against the Crips.”

On the afternoon of October 21, 2015, Hom and three other deputies were on patrol in the area of the USA gas station. Hom observed 17-year-old T.T. and two adult males standing at the gas station. T.T. was between the two older men. T.T. and one of the other men were wearing black shorts or pants with burgundy stripes; the third man was wearing a burgundy belt. All three were “facing outwards as if they were not talking to each other

but keeping an eye out on the street, traffic and pedestrians.” A memorial for the murder victim was nearby. The area was busy, with considerable pedestrian and vehicle traffic.

The deputies left the area to handle other matters and returned approximately 45 minutes later. T.T. and the other men were still standing in the same location. Hom approached T.T. to investigate a possible violation of Carson Municipal Code, chapter 13, section 41301, subdivision (a)(1), which prohibits loitering by criminal street gangs. Hom ordered T.T. to put his hands behind his back and conducted a pat search. He discovered an operable, black, semiautomatic, nine-millimeter high point pistol, loaded with eight bullets, in T.T.’s waistband beneath his shirt.

Hom explained that he conducted the pat search out of concern for “officer safety,” given “the clothing that all three suspects were wearing, the color burgundy, the graffiti throughout the area, the murder that just occurred, the type of graffiti writing that was there, officer safety, and he was also the younger of the three. I know commonly that juveniles carry the narcotics and weapons. For officer safety, I conducted a pat-down search.” He believed the men were SDP gang members. Neither he nor the other deputies knew T.T. or the other men.

After being advised of and waiving his *Miranda* rights,¹ T.T. admitted in a written statement that he had purchased the gun “from a Mexican guy at a park. I bought it for protection because my friend got murdered on Saturday. I bought the gun that night.”

¹ *Miranda v. Arizona* (1966) 384 U.S. 436.

T.T. sought to suppress evidence of the gun and his statements on the ground the detention and the warrantless search violated the Fourth Amendment. The People argued that based on the totality of the circumstances, Detective Hom had reasonable suspicion justifying both the detention and search. T.T. countered that Hom acted on a hunch and lacked reasonable suspicion. The officers did not know T.T. or his companions, and there was no evidence they believed T.T. was responsible for the graffiti. T.T. urged that Hom's actions were inconsistent with an investigation into loitering and no facts gave rise to a reasonable and articulable suspicion he was armed.

The juvenile court found Hom had reasonable suspicion for the detention and pat search and denied the suppression motion. It found the allegations in the October 23, 2015 petition true. The matter was transferred to another court, which had jurisdiction over an earlier, unrelated petition, for disposition of both matters.²

² A petition filed March 19, 2014, alleged that T.T. had sold, offered to sell, or transported marijuana (Health & Saf. Code, § 11360, subd. (a), count 1) and had possessed marijuana for sale (Health & Saf. Code, § 11359, count 2). T.T. admitted count 1, and count 2 was dismissed. The court granted deferred entry of judgment and placed T.T. on probation for a period of 12 to 36 months. The March 19 petition is not at issue here.

The court declared T.T. a ward of the court pursuant to Welfare and Institutions Code section 602, declared the offenses felonies, and ordered T.T. placed in the camp-community placement program for a period of five to seven months. It set the maximum term of confinement at four years eight months. T.T. appeals.

DISCUSSION

T.T. contends the juvenile court erred by denying his suppression motion, and therefore the court's order sustaining the October 23, 2015 petition must be reversed. We disagree.

1. *Standard of review*

The Fourth Amendment guarantees the right to be free of unreasonable searches and seizures by law enforcement personnel. (U.S. Const., 4th Amend.; *People v. Rogers* (2009) 46 Cal.4th 1136, 1156.) On review of a trial court's ruling on a suppression motion, we defer to the trial court's express or implied factual findings if they are supported by substantial evidence, but exercise our independent judgment to determine whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment. (*People v. Suff* (2014) 58 Cal.4th 1013, 1053; *Robey v. Superior Court* (2013) 56 Cal.4th 1218, 1223.) Challenges to the admissibility of a search or seizure must be evaluated solely under federal constitutional standards. (*Robey v. Superior Court, supra*, at p. 1223; *People v. Lenart* (2004) 32 Cal.4th 1107, 1118.) A warrantless search is presumed to be unreasonable, and the prosecution bears the burden of demonstrating a legal justification for it. (*People v. Suff, supra*, at p. 1053; *People v. Redd* (2010) 48 Cal.4th 691, 719.)

2. *The juvenile court properly denied T.T.’s suppression motion*

Detective Hom’s detention of T.T. did not offend the Fourth Amendment.³ “[A]n officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.” (*Illinois v. Wardlow* (2000) 528 U.S. 119, 123; *Terry v. Ohio* (1968) 392 U.S. 1, 30.) Such a detention is reasonable under the Fourth Amendment when the detaining officer can point to specific, articulable facts that, considered in the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity. (*People v. Casares* (2016) 62 Cal.4th 808, 837-838; *Illinois v. Wardlow*, *supra*, at pp. 123-124; *People v. Suff*, *supra*, 58 Cal.4th at pp. 1053-1054; *People v. Souza* (1994) 9 Cal.4th 224, 231.) Reasonable suspicion is a lesser standard than probable cause. (*People v. Wells* (2006) 38 Cal.4th 1078, 1083; *People v. Letner and Tobin* (2010) 50 Cal.4th 99, 146 [the reasonable suspicion standard “is not a particularly demanding one”].) The concept of reasonable suspicion cannot be reduced to a “‘neat set of legal rules’ ” but must be based upon commonsense judgments and inferences about human behavior. (*United States v. Sokolow* (1989) 490 U.S. 1, 7; *Illinois v. Wardlow*, *supra*, at pp. 124-125; *People v. Turner* (2013) 219 Cal.App.4th 151, 161; *In re H.M.* (2008) 167 Cal.App.4th 136, 143.) The “evidence relied on by

³ There is no dispute that Detective Hom detained T.T. when he ordered him to place his hands above his head and conducted the pat search. (See *People v. Mendoza* (2011) 52 Cal.4th 1056, 1081 [a seizure occurs when an officer restrains a person’s liberty by force or show of authority].)

police officers to justify the seizure of a person ‘must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.’” (*People v. Souza, supra*, at p. 240.) However, an officer’s suspicion must be objectively reasonable, and “ ‘an investigative stop or detention predicated on mere curiosity, rumor, or hunch is unlawful, even though the officer may be acting in complete good faith. [Citation.]’ ” (*People v. Wells, supra*, at p. 1083.) A reasonable suspicion cannot be based *solely* on factors unrelated to the defendant, such as criminal activity in the area. (*People v. Casares, supra*, at p. 838.)

Here, the totality of the circumstances gave rise to a reasonable suspicion that T.T. was loitering in violation of Carson Municipal Code, chapter 13, section 41301, subdivision (a)(1). That section makes it unlawful for any member of a criminal street gang to loiter in a public place with the intent to publicize the gang’s dominance over territory, in order to intimidate nonmembers of the gang from entering or using the area.⁴

⁴ Carson Municipal Code, chapter 13, section 41301 provides: “(a) It is unlawful for any person who is a member of a ‘criminal street gang’ as that term is defined in California Penal Code Section 186.22(f) or who is acting in concert with a member of a criminal street gang to loiter or idle in a ‘public place’ as defined in subsection (b) of this Section under any of the following circumstances: [¶] (1) With the intent to publicize a criminal street gang’s dominance over certain territory in order to intimidate nonmembers of the gang from entering, remaining in, or using the public place or adjacent area; [¶] (2) With the intent to conceal ongoing commerce in illegal drugs or other unlawful activity. [¶] (b) For purposes of this Chapter, a ‘public place’ means the public way and any other location open to the public, whether publicly or privately owned, including, but not limited to,

Detective Hom observed T.T. standing near a memorial for the victim of a recent gang-related shooting. The victim was a member of the SDP gang. The gang's signature color was burgundy red. Hom had observed an increased number of gang members loitering at the gas station between the time the murder occurred and the time he detained T.T. T.T. and his two companions were wearing clothing that incorporated the gang's burgundy red color. They were not talking to each other, nor were they placing flowers or otherwise attending to the memorial. Instead, they were "keeping an eye out on the street," suggesting they were attempting to demonstrate dominance over the area and intimidate others. SDP graffiti, including a crossed-out "C," was nearby. In the opinion of Hom, an experienced gang officer, after a gang-related murder it was likely the victim's gang would wish to show dominance and prove it "owned" the territory where the murder occurred. Based on Hom's initial and subsequent observations of the trio, he could reasonably infer that they had been loitering there for at least 45 minutes. In short, T.T. appeared to be a gang member loitering in a public place with the intent to publicize the gang's dominance over the murder site. These specific, articulable facts provided Hom with a reasonable suspicion that T.T. was violating Carson Municipal Code, chapter 13, section 41301.

any street, sidewalk, avenue, highway, road, curb area, alley, park, playground or other public ground or public building, any common area of a school, hospital, apartment house, office building, transport facility, shop, privately owned place of business, to which the public is invited, including any place of amusement, entertainment, or eating place. Any 'public place' also includes the front yard area, driveway and walkway of any business, hotel, motel, or multifamily residential dwelling."

T.T. argues that the totality of the evidence failed to establish Hom had a reasonable suspicion he was engaged in any particular criminal activity. He points out that Hom was admittedly unfamiliar with him and his companions and did not know they were gang members. Further, Hom could not be sure the trio remained at the gas station during the 45 minutes between Hom's first and second observations of them. But an officer need not be certain his suspicions are correct in order to detain a suspect. "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, supra*, 9 Cal.4th at p. 233; *Illinois v. Wardlow, supra*, 528 U.S. at p. 125; *In re H.M., supra*, 167 Cal.App.4th at p. 145.) Hom might not have been certain that T.T. was a gang member, or that he had remained loitering at the gas station for 45 minutes, but such conclusions were reasonable inferences from the facts known to him at the time of the detention.

Nor are we persuaded by T.T.'s argument that there was no indication he had the requisite intent to publicize his gang's dominance over territory in order to intimidate nonmembers. Although, as he argues, there was no evidence he was flashing gang signs or engaging in other overt gang-related behavior, and no one had complained about his loitering to police, such evidence was not required. From his actions of standing for an extended period at the victim's memorial, near SDP gang graffiti and the crossed-out "C," with persons who appeared to be fellow gang members, it was a reasonable inference that he intended to display his gang's dominance over the area and intimidate nongang members.

T.T. further urges that the mere facts he was a gang member and was present in gang territory were insufficient to give rise to a reasonable suspicion he was engaged in criminal activity. (See, e.g., *People v. Hester* (2004) 119 Cal.App.4th 376, 392 [gang membership alone does not support an inference of criminal activity]; *People v. Roth* (1990) 219 Cal.App.3d 211, 215 [defendant's mere presence in a deserted shopping center parking lot in the early hours of the morning was not an indicia of criminal activity]; *People v. Sandoval* (2008) 163 Cal.App.4th 205, 212 [defendant's presence in front of a house in which narcotics were thought to be present was insufficient, by itself, to give officers a reasonable suspicion defendant was committing a crime]; *People v. Medina* (2003) 110 Cal.App.4th 171, 174-178 [facts that traffic stop occurred in a "high-gang" location late at night were insufficient, by themselves, to justify detention and frisk].)

Certainly, the time and location of an encounter, while relevant considerations, are insufficient *by themselves* to cast reasonable suspicion on an individual. (*People v. Medina, supra*, 110 Cal.App.4th at p. 177.) But the facts here were not so limited. Instead Hom was presented with a trio of apparent gang members, days after the murder of their compatriot, standing for an extended period at the murder site, next to a memorial, in the gang's territory, and near gang graffiti suggesting retaliation against a rival gang was contemplated. This information, coupled with Hom's knowledge of gang norms, provided far more evidence than that present in the cases cited by T.T.

People v. Hester, supra, 119 Cal.App.4th 376, cited by T.T., is readily distinguishable. In *Hester*, two people were killed and others wounded in a gang-related drive-by shooting. Some of the victims were members of the Country Boy Crips gang, and the

East Side Crips gang was believed to be responsible for the shooting. Later that night, officers observed three cars travelling together in East Side Crips territory. The officers recognized one man in one of the vehicles as an East Side Crip. They observed other Black males present in two of the cars. The officers stopped and searched the car in which the East Side Crip member was riding, finding a weapon and cocaine. The officers justified the stop on the basis that, in their experience, gang members travel in groups; the victims' gang was likely to retaliate; and gang members who know they are suspects in a crime would arm themselves. (*Id.* at pp. 382-384.)

A divided appellate panel concluded the stop violated the Fourth Amendment. (*People v. Hester, supra*, 119 Cal.App.4th at pp. 391-392.) The majority reasoned that the facts were insufficient to support an inference that the cars were actually travelling together, that all persons in the cars were East Side Crips members, or that all East Side Crips gang members knew about the shooting. (*Id.* at pp. 388-389.) There were no specific and articulable facts providing an objective basis for the conclusion the detainees might be involved in some criminal activity; instead the officers acted on “a hunch and intuition.” (*Id.* at pp. 390, 391.) “Reducing this stop to its essence, [the officers] acted because a passenger in the vehicle was a member of the East Side Crips. Mere membership in a criminal street gang, without additional *facts* supporting an inference of criminal activity, does not permit a detention.” (*Id.* at p. 392.)

Unlike in *Hester*, T.T. was not detained simply because he was suspected of being a gang member. Instead he was detained because, as we have explained, there were specific and articulable facts giving rise to a reasonable suspicion he was committing a particular offense, loitering in violation of the Carson Municipal

Code. In contrast, the officers in *Hester* had no reason to suspect the occupants of the vehicles were engaged in criminal activity.

Having concluded that the detention was permissible, we also conclude that the pat search was lawful. When an officer reasonably suspects that an individual whose suspicious behavior he or she is investigating is armed and dangerous to the officer or others, the officer may perform a pat search for weapons. (*Terry v. Ohio, supra*, 392 U.S. at pp. 24, 30; *People v. Rios* (2011) 193 Cal.App.4th 584, 598-599; *In re H.M., supra*, 167 Cal.App.4th at p. 143.) Such a limited frisk is justified where the officer can point to specific and articulable facts which, considered in conjunction with rational inferences to be drawn therefrom, give rise to a reasonable suspicion that the suspect is armed and dangerous. (*Terry v. Ohio, supra*, at p. 21; *In re H.M., supra*, at p. 143; *People v. Medina, supra*, 110 Cal.App.4th at p. 176.) A pat search is a “serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.” (*Terry v. Ohio, supra*, at p. 17; *In re H.M., supra*, at p. 143.) On the other hand, law enforcement officers have a legitimate need to protect themselves even where they may lack probable cause for an arrest. The officer has an immediate interest in taking steps to ensure that the person stopped is not armed with a weapon that could unexpectedly and fatally be used against him or her. (*Terry v. Ohio, supra*, at p. 23; *In re H.M., supra*, at p. 143.) The officer need not be absolutely certain the individual is armed; the issue is whether a reasonably prudent person in the totality of the circumstances would be warranted in the belief that his safety was in danger. (*Terry v. Ohio, supra*, at p. 27; *People v. Mendoza, supra*, 52 Cal.4th at pp. 1081-1082; *In re H.H.* (2009) 174 Cal.App.4th 653, 657-658.) Whether a search is reasonable

must be determined based upon the circumstances known to the officer when the search was conducted. (*People v. Brendlin* (2008) 45 Cal.4th 262, 273.)

Detective Hom knew that, as a general matter, gang members are frequently armed. (See *In re H.M.*, *supra*, 167 Cal.App.4th at p. 146 [it is common knowledge that members of criminal street gangs often carry guns and other weapons].) Based on T.T.'s attire, companions, and extended presence at the memorial site, Hom reasonably inferred T.T. was an SDP member. While officers may not rely on a mere hunch, they “may ‘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.” ’ ” (*People v. Hernandez* (2008) 45 Cal.4th 295, 299.) The murder had occurred a few days earlier. Based upon his training and experience, Hom knew that the SDP gang would likely seek to establish dominance over their territory in order to avoid appearing weak. In particular, the gang had to “show force and back it up and prove that they owned this territory.” As discussed *ante*, T.T. and his companions appeared to be attempting just such a show of dominance. Hom also knew it was likely the SDP gang would attempt to retaliate. Graffiti near the memorial site included the crossed-out “C,” which signified the gang intended a strike against the Crips. Given these facts, it was reasonable for Hom to suspect that the gang members at the murder site would be armed. (See *In re H.M.*, *supra*, at p. 148 [officer had the experience and knowledge of the area to make reasonable inferences and commonsense judgments from the facts].) Hom also knew that younger gang members are required to “put in work” and are often assigned to carry weapons. T.T. was 17, and his two companions were in their early 30's, allowing

the inference that T.T. was likely entrusted with the trio's weaponry. The foregoing specific and articulable facts provided Hom with a reasonable suspicion T.T. was armed.

T.T. argues that he did not act nervous, make furtive gestures, or attempt to flee, and there were no suspicious bulges under his clothing that might have suggested he was hiding a weapon. Certainly, such facts might have provided additional bases for Hom to reasonably suspect T.T. was armed. However, their absence does not compel the conclusion the pat search was unlawful. Each case must be determined based on its own facts. (*People v. Durazo* (2004) 124 Cal.App.4th 728, 735 [the determination of reasonableness is "inherently case-specific"]; *In re H.M.*, *supra*, 167 Cal.App.4th at p. 143.)

DISPOSITION

The juvenile court's order sustaining the petition is affirmed.

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ALDRICH, J.

We concur:

EDMON, P. J.

LAVIN, J.