Filed 8/23/17 In re J.G. CA2/6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re J.G., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B279379 (Super. Ct. No. KJ39902) (Los Angeles County)
THE PEOPLE, Plaintiff and Respondent, v. J.G., Defendant and Appellant.	

J.G., a minor, appeals from a judgment and order of disposition which declared him a ward of the court and placed him on home probation after he admitted that he carried a concealed firearm. (Welf. & Inst. Code, § 602; Pen. Code, § 25400, subd. (a)(2).) J.G. contends the court should have granted his motion to suppress evidence because no reasonable suspicion supported his detention. We affirm.

BACKGROUND

At about 12:15 p.m. on a July afternoon, "Christian" called 911 from his house to ask police to come quickly because two men had just "walked in [his] driveway" with a gun. He asked police to "Hurry!" and said: "They're at my house." While he was speaking, his "mom [said] . . . they left." The men drove a white Honda. One wore a blue Dodgers sweater and the other wore a white shirt.

Christian called 911 again shortly after his first call and said, "They came back." He said the men parked the white Honda outside the house and "they got outside the car." The dispatcher told him, "The officers are there and they can't find the car."

Baldwin Park Police Officer Leonard Avila testified that he went to Christian's house in response to a 911 call. He knew from the dispatch that there were two men in the driveway with a gun, they were driving a white Honda, and one wore a blue sweater. When Avila arrived, the dispatcher said the "[reporting party] called back and advised the vehicle is now [at the location]." Avila testified that the dispatcher also said one or both suspects were Hispanic. In the dispatch transcript, the suspect is first described as Hispanic after Avila detains J.G.

Avila saw J.G. within three minutes after Avila was dispatched. He did not see the Honda or anyone in the driveway, but he saw J.G. walking away from Christian's house, "half a house" away. No one else was on the street. J.G. was not wearing a blue sweater or a white shirt. Avila detained J.G., patted him down, and found a loaded gun.

DISCUSSION

Under the Fourth Amendment, a warrantless search or seizure is presumed to be unreasonable and the prosecution bears the burden of demonstrating it was justified. (*People v. Williams* (1999) 20 Cal.4th 119, 127.) When we review an order denying a motion to suppress we defer to the trial court's express and implied factual findings if they are supported by substantial evidence, and we exercise our independent judgment to determine if the search or seizure was reasonable. (*People v. Redd* (2010) 48 Cal.4th 691, 719.)

A brief investigatory detention is justified when the circumstances known or apparent to the officer include specific and articulable facts giving rise to an objectively reasonable suspicion that (1) some activity related to crime has taken place, is occurring, or is about to occur; and (2) the person stopped is involved in that activity. (*In re Tony C.* (1978) 21 Cal.3d 888, 893 (*Tony C.*).) Mere curiosity, rumor, or hunch will not justify a detention. (*Terry v. Ohio* (1968) 392 U.S. 1, 22.)

Avila had a reasonable articulable suspicion that activity related to crime had taken place because he learned from dispatch that two men were in Christian's driveway with a gun. He had a reasonable articulable suspicion that J.G. was involved because J.G. was walking away from the house three minutes after Avila was dispatched and was the only person on the street. (*People v. Brown* (2015) 61 Cal.4th 968, 981 (*Brown*) [investigatory detention justified where the defendant was driving away from an alley within three minutes of a 911 call reporting an armed fight in progress]; *People v. Conway* (1994) 25 Cal.App.4th 385, 388 (*Conway*) [detention justified where the defendant's car was the only car on the street within two minutes

of a reported burglary]; *People v. Lloyd* (1992) 4 Cal.App.4th 724, 733-734 (*Lloyd*) [detention justified where officers saw the defendant alone walking away from a business where a silent alarm had just been triggered]; *People v. Anthony* (1970) 7 Cal.App.3d 751, 761 (*Anthony*) [detention justified where the defendant's vehicle was two or three blocks from the scene within minutes of an armed robbery and no other cars were in the area].)

J.G. argues his presence in the afternoon was not suspicious and points out that the detentions in *Brown*, *Conway*, *Lloyd*, and *Anthony* all occurred at night. But J.G. was the only person present near Christian's driveway where two men with a gun had just been seen. The circumstances which will justify a detention are diverse and each case must be decided on its own facts using an objective standard. (*Anthony*, *supra*, 7 Cal.App.3d at pp. 760-761.) The totality of the circumstances justified detention here.

This case is unlike *Tony C.* in which a "day-old burglary report" did not justify the detention of two black youths seen walking in the neighborhood at noon the next day. (*Tony C.*, *supra*, 21 Cal.3d at p. 897.) J.G. was walking away from the driveway, only "half a house" away, minutes after the reported crime.

That J.G. could have been walking by the driveway instead of away from it does not render the detention illegal. The possibility that these circumstances are consistent with lawful activity does not render the detention invalid because they also raise a reasonable suspicion of criminal activity. (*Conway*, *supra*, 25 Cal.App.4th at p. 390.) The lawful purpose of an investigative stop is to resolve such ambiguity. (*Ibid.*)

Whether information about the suspects' ethnicity was dispatched before or after the detention is immaterial. Avila did not testify that he relied on J.G.'s ethnicity to associate J.G. with the reported crime, and a matching description was not essential to reasonable suspicion. The officers in *Brown*, *Conway*, and *Lloyd* also lacked matching physical descriptions, but the temporal and geographical proximity of the lone individuals in those cases raised reasonable suspicions like those raised here.

DISPOSITION

The judgment and order are affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Geanene M. Yriarte, Judge

Superior Court County of Los Angeles

Mary Bernstein, under appointment by the Court of Appeal, for Defendant and Appellant.

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