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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

R.C.,

Defendant and Appellant.

A130996

(Alameda County

Super. Ct. No. SJ10-015659-01)

After defendant's motion to suppress evidence (Welf. & Inst. Code, § 700.1) was denied, he entered an admission to one count of disturbing the peace (Pen. Code, § 415). In this appeal he renews his claim that he was unlawfully detained and searched. We find that defendant gave consent to the search before any unlawful detention occurred, and affirm the judgment.

STATEMENT OF FACTS

San Leandro Police Officer Timothy Chinn testified that on the night of August 22, 2010, he responded to the report of a "possible battery" at Washington Elementary School. When Officer Chinn arrived at the school, Sergeant Henderson was already on the scene and "talking to a group of juveniles" sitting on a bench. In a "different location" on the school property, two other officers had contacted another "group of juveniles."

Officer Chinn approached Sergeant Henderson “to cover him.” He recognized defendant, who was “sitting on a park bench,” from “prior contacts” with him a week before. The officer asked defendant to “stand up and come over toward” him. The battery investigation was ongoing, and Officer Chinn “wanted to talk to” defendant. Defendant “walked over” to Officer Chinn, whereupon the officer asked if he had “anything illegal or any contraband on his person.” Defendant “said ‘no.’” Officer Chinn then asked defendant, “Do you mind if I check?” Again defendant replied “No.” During the search of defendant and his backpack that followed, Officer Chinn found a large black permanent marking pen, smaller marking pens, three bottles of fabric paint, and a notebook. The officers thereafter determined that no battery had been committed.

DISCUSSION

Defendant argues that the prosecution “presented no evidence of the validity of *Sergeant Henderson’s* initial detention” of him. Therefore, despite the subsequent consent to search given by defendant, he claims that the “search cannot stand.” He asks us to remand the case to the trial court with directions to grant the motion to suppress and afford him an opportunity to “withdraw his admission if he so desires.”

“The standard of appellate review of a trial court’s ruling on a motion to suppress evidence is well established. We defer to the trial court’s factual findings, express or implied, if supported by substantial evidence, with all presumptions favoring the trial court’s exercise of its power to judge the credibility of the witnesses, resolve conflicts in the testimony, weigh the evidence and draw factual inferences. [Citations.] However, in determining whether on the facts so found the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment.” (*People v. McHugh* (2004) 119 Cal.App.4th 202, 209.) “Further, we examine the legal issues surrounding the potential suppression of evidence derived from a police search and seizure by applying federal constitutional standards.” (*People v. Superior Court (Walker)* (2006) 143 Cal.App.4th 1183, 1195.) “Pursuant to article I, section 28, of the California Constitution, a trial court may exclude evidence under Penal Code section 1538.5 only if exclusion is mandated by the federal Constitution.” (*People v. Banks* (1993) 6 Cal.4th

926, 934.) We defer to the trial court’s findings of fact, but measure those facts against federal constitutional standards of reasonableness. (*People v. Miller* (2004) 124 Cal.App.4th 216, 221.)

Our inquiry in the present case is two-fold: whether a detention of defendant occurred before consent to search was obtained; and if so, whether the detention was supported by the requisite cause.¹ “Consent that is the product of an illegal detention is not voluntary and is ineffective to justify a search or seizure.” (*People v. Zamudio* (2008) 43 Cal.4th 327, 341 (*plur. opn. of White, J.*); see also *Florida v. Royer* (1983) 460 U.S. 491, 507–508; *Wilson v. Superior Court* (1983) 34 Cal.3d 777, 790–791; *People v. Shields* (1988) 205 Cal.App.3d 1065, 1073–1074.) If defendant was not detained before he gave consent to the search, or if the detention was lawful, we examine the totality of the circumstances to determine if his consent was voluntary. (*Zamudio, supra*, at p. 342.)

“A seizure occurs when the police, by the application of physical force or show of authority, seek to restrain the person’s liberty [citations]; the police conduct communicates to a reasonable innocent person that the person is not free to decline the officer’s request or otherwise terminate the encounter [citation]; and the person actually submits to that authority [citation] for reasons not ‘independent’ of the official show of authority [citation]. Admittedly, the application of this test to particular circumstances is sometimes more an art than a science. [Citation.] As the high court has emphasized, ‘for the most part *per se* rules are inappropriate in the Fourth Amendment context. The proper inquiry necessitates a consideration of “all the circumstances surrounding the encounter.” ’ [Citations.]” (*People v. Brendlin* (2006) 38 Cal.4th 1107, 1118.) “ “[A] person has been ‘seized’ within the meaning of the Fourth Amendment” . . . “only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he [or she] was not free to leave.” ’ [Citation.] The high court later

¹ Contrary to defendant’s protestations, the issue of whether the encounter was consensual may be considered in this appeal. (See *In re Manuel G.* (1997) 16 Cal.4th 805, 820.) Based on the record before us we can determine if the defendant’s initial contact with officers constituted a detention or consensual encounter, which is part of the same issue of the lawfulness of the encounter.

made clear that this test ‘states a necessary, but not a sufficient, condition for seizure.’ [Citation.] In order for there to be a seizure under the Fourth Amendment there must also be an arrest, by the application of physical force or by submission to the assertion of authority.” (*People v. Hoyos* (2007) 41 Cal.4th 872, 893, italics omitted.)

“ ‘Although there is no “bright-line” distinction between a consensual encounter and a detention . . . “the police can be said to have seized an individual ‘only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.’ ” ’ [Citations.] ‘ “The test is necessarily imprecise, because it is designed to assess the coercive effect of police conduct, taken as a whole, rather than to focus on particular details of that conduct in isolation.” ’ [Citation.]” (*Ford v. Superior Court* (2001) 91 Cal.App.4th 112, 124.) We must make a realistic assessment of appellant’s encounter with the police based upon the totality of the specific facts presented to us. (*People v. Bouser* (1994) 26 Cal.App.4th 1280, 1287; *People v. Grant* (1990) 217 Cal.App.3d 1451, 1458.) “What constitutes a restraint on liberty such that a person would conclude that he is not free to leave varies with the particular police conduct at issue and the setting in which the conduct occurs.” (*People v. Ross* (1990) 217 Cal.App.3d 879, 884.) “Circumstances establishing a seizure might include any of the following: the presence of several officers, an officer’s display of a weapon, some physical touching of the person, or the use of language or of a tone of voice indicating that compliance with the officer’s request might be compelled.” (*In re Manuel G.*, *supra*, 16 Cal.4th 805, 821.)

We find based on the record before us that no detention or seizure of defendant occurred when Officer Chinn parked his vehicle, approached the group assembled on the bench, and asked to speak with defendant. (*People v. Turner* (1994) 8 Cal.4th 137, 179–180; *People v. Menifee* (1979) 100 Cal.App.3d 235, 238–239.) The established rule is “ ‘that a detention does not occur when a police officer merely approaches an individual on the street and asks a few questions. [Citation.] As long as a reasonable person would feel free to disregard the police and go about his or her business, the encounter is consensual and no reasonable suspicion is required on the part of the officer. Only when

the officer, by means of physical force or show of authority, in some manner restrains the individual's liberty, does a seizure occur. [Citations.]' [Citation.]" (*People v. Colt* (2004) 118 Cal.App.4th 1404, 1411.) "An officer has every right to talk to anyone he encounters while regularly performing his duties Until the officer asserts some restraint on the contact's freedom to move, no detention occurs." (*People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1227; see also *People v. Dickey* (1994) 21 Cal.App.4th 952, 954–955.) "[T]here must also be an actual taking into custody, whether by the application of physical force or by submission to the assertion of authority. [Citation.] [The United States Supreme Court] has also cautioned against an undue focus on the fact that government action caused some restriction on an individual's freedom of movement: 'a Fourth Amendment seizure does not occur whenever there is a governmentally caused termination of an individual's freedom of movement . . . , nor even whenever there is a governmentally caused and governmentally *desired* termination of an individual's freedom of movement . . . , but only when there is a governmental termination of freedom of movement *through means intentionally applied.*' " [Citations.]" (*People v. Brendlin, supra*, 38 Cal.4th 1107, 1115–1116.)

Here, Officer Chinn observed defendant and the others in his group sitting on a park bench. Nothing in the record before us indicates that Sergeant Henderson had confined the freedom to leave of defendant or anyone else in the group. Henderson was alone as he faced "the group of juveniles." No evidence suggests he had drawn his weapon or engaged in any physical restraint of the persons he was talking to. Officer Chinn testified that when he arrived Sergeant Henderson was merely conversing with the juveniles assembled on the bench. Officer Chinn wanted to "talk to" defendant about the battery report, and asked him to "come over" to do so. He used a "normal speaking" tone; he did not draw his firearm; he did not shine his flashlight on defendant. He did not engage in any further display of physical force or show of authority to signify to defendant that he was compelled to stay. (*In re Manuel G., supra*, 16 Cal.4th 805, 821–822; *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1254.)

Defendant’s claim that a detention occurred is primarily based on Officer Chinn’s affirmative responses to defense counsel’s assertions that the juveniles seated on the bench had been “detained” before he arrived. The officer’s characterization of the encounter is of no consequence to our evaluation of whether a lawful seizure occurred within the meaning of the Fourth Amendment. “Whether a seizure occurred within the meaning of the Fourth Amendment is a mixed question of law and fact,” determined not by the officer, but initially by the trial court and ultimately independently reviewed on appeal. (*People v. Zamudio, supra*, 43 Cal.4th 327, 342; *People v. Holloway* (2004) 33 Cal.4th 96, 120; *People v. Leyba* (1981) 29 Cal.3d 591, 597–598; *People v. Bowers* (2004) 117 Cal.App.4th 1261, 1273.) “ ‘We independently assess as a question of law whether, under such facts as found by the trial court, the challenged action by the police was constitutional. [Citation.]’ [Citation.]” (*People v. Lindsey* (2007) 148 Cal.App.4th 1390, 1395.) The test of whether defendant was detained when he gave consent is objective, not subjective; it looks to the intent of the police as objectively manifested to the person confronted. The officer’s state of mind “ ‘and the individual citizen’s subjective belief are irrelevant’ [Citation.]” (*Zamudio, supra*, at p. 341; see also *Whren v. United States* (1996) 517 U.S. 806, 812–813; *People v. Roberts* (2010) 184 Cal.App.4th 1149, 1189.) “ ‘[T]he inquiry focuses on whether the officer was legally authorized to make an arrest and conduct a search. If, in the abstract, the officer does no more than he or she is legally permitted to do, regardless of the subjective intent with which it was done, the arrest and search are objectively reasonable’ [Citation.]” (*People v. Logsdon* (2008) 164 Cal.App.4th 741, 745.)

As we read the record, Officer Chinn approached the group of seated juveniles. Sergeant Harrison “was talking to them.” Nothing in the nature of a coercive atmosphere, restraint of defendant’s liberty, or objective manifestation that he was not free to leave, is suggested by the evidence, and we must accept factual inferences in favor of the trial court’s ruling. (*People v. Stansbury* (1995) 9 Cal.4th 824, 831.) We conclude that defendant was not detained when consent to search was requested of him. “It is well established that law enforcement officers may approach someone on the street or in

another public place and converse if the person is willing to do so.” (*People v. Rivera* (2007) 41 Cal.4th 304, 309.) “Unlike a detention, a consensual encounter between a police officer and an individual does not implicate the Fourth Amendment.” (*Ibid.*) Consensual encounters “require no articulable suspicion that the person has committed or is about to commit a crime.” (*In re Manuel G.*, *supra*, 16 Cal.4th 805, 821.)

We further conclude that if defendant was detained, adequate cause to do so existed. “ ‘A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in the light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.’ [Citations.] In other words, any reasonable police officer in a like position, drawing on his or her training and experience, would suspect the same criminal activity and involvement by the person in question.” (*People v. Roberts*, *supra*, 184 Cal.App.4th 1149, 1189.) “The guiding principle in determining the propriety of an investigatory detention is ‘the reasonableness in all the circumstances of the particular governmental invasion of a citizen’s personal security.’ [Citations.]” (*People v. Wells* (2006) 38 Cal.4th 1078, 1083.) “ ‘Reasonable suspicion is a less demanding standard than probable cause and is determined in light of the totality of the circumstances. [Citation.]’ [Citation.]” (*People v. Lindsey*, *supra*, 148 Cal.App.4th 1390, 1396.)

The totality of the facts known to Officer Chinn justified the detention. He was responding to a report of a possible battery at Washington Elementary School late at night. He arrived within a “few minutes,” and observed defendant with a group of three or four friends on a bench at the school. He recognized defendant from a very recent prior contact “after hours,” during which defendant was under the influence of alcohol and was found with a picture of a gun on his cell phone. The officer was still investigating the battery report when he asked to speak to defendant. We are persuaded that the officer identified specific, articulable facts that, considered in light of the totality of the circumstances, provided an objective manifestation of a reasonable suspicion of criminal activity. (*People v. Lindsey*, *supra*, 148 Cal.App.4th 1390, 1396.)

When Officer Chinn approached defendant and asked for consent to search, defendant made no attempt to depart. The officer exercised no control over defendant prior to asking him for permission to check for contraband or anything illegal on his person. (*People v. Fisher* (1995) 38 Cal.App.4th 338, 343–344.) Defendant had the right to refuse to speak with Officer Chinn or deny the request for consent to search. A request to search, “by its nature, carries the implication that permission may be withheld.” (*People v. Ledesma* (2006) 39 Cal.4th 641, 704.) The request for consent was not the product of an unlawful detention. And finally, no evidence was presented that the consent obtained from defendant was otherwise involuntary. (*People v. Rivera, supra*, 41 Cal.4th 304, 311; see also *People v. Zamudio, supra*, 43 Cal.4th 327, 342.) The trial court therefore did not err by denying defendant’s motion to suppress evidence discovered during the ensuing search.

Accordingly, the judgment is affirmed.

Dondero, J.

We concur:

Margulies, Acting P. J.

Banke, J.