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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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

THE PEOPLE,

Plaintiff and Respondent,

v.

G.M.,

Defendant and Appellant.

A133361

(Solano County
Super. Ct. No. J39893)

G.M., (Minor) appeals from a dispositional order of probation entered after he admitted one count of driving while under the influence of alcohol in violation of Vehicle Code section 23152, subdivision (a). He contends the juvenile court erred in denying his motion to suppress evidence pursuant to Welfare and Institutions Code section 700.1,¹ because his encounter with a police officer was not consensual. He also argues that certain probation conditions imposed by the juvenile court are unconstitutionally vague and overbroad. We shall modify the probation conditions, and otherwise affirm the order.

¹ Further references are to the Welfare and Institutions Code, unless otherwise indicated.

I. FACTUAL AND PROCEDURAL BACKGROUND

On June 4, 2011, at about 10:49 p.m., Officer Loren Thomson of the Solano County Sheriff's Office responded to a dispatch call regarding a dispute among a large group of people at a boat launch known as Belden's Landing. As Thomson arrived at the scene, a pickup truck carrying four occupants began to pull out of the parking lot. The area was dark, and from approximately 35 feet away, Thomson shone the spotlight of his patrol car toward the truck. Minor, who was driving, stopped the vehicle. Thomson neither ordered the truck to stop nor prevented it from leaving the parking lot. He stepped out of his patrol car, approached the truck, and noticed a strong odor of marijuana and alcohol. Minor had red, watery eyes, and Thomson saw an open can of beer in a cup holder. Thomson told Minor to step out of the truck. Minor smelled strongly of alcohol. Thomson searched and handcuffed Minor and placed him in the back of the patrol car.

The Solano County District Attorney filed a juvenile wardship petition pursuant to section 602, charging Minor with driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)), and driving with a blood alcohol level of .08 percent or higher (Veh. Code, § 23152, subd. (b)).²

Minor filed a motion to suppress evidence on the ground that Thomson had detained him unlawfully. (§ 700.1.) The juvenile court denied Minor's motion to suppress the evidence, finding that Thomson's use of his spotlight did not effect a detention, that Minor voluntarily chose to stop his vehicle and to stay there while the officer approached him, and that once Thomson smelled marijuana and alcohol, he had probable cause to detain Minor.

Minor admitted to driving while under the influence, and the court granted the district attorney's motion to dismiss the other count. At the dispositional hearing, the

² Minor was already on juvenile probation on another matter.

juvenile court continued Minor's wardship and probation status and placed him on probation in the custody of his parents.

II. DISCUSSION

A. Motion to Suppress under section 700.1

“The standard of review of a trial court’s ruling on a motion to suppress is well established and is equally applicable to juvenile court proceedings. “On appeal from the denial of a suppression motion, the court reviews the evidence in a light favorable to the trial court’s ruling. [Citation.] We must uphold those express or implied findings of fact by the trial court that are supported by substantial evidence and independently determine whether the facts support the court’s legal conclusions.” [Citation.]’ ” (*In re Lennies H.* (2005) 126 Cal.App.4th 1232, 1236.)

Minor contends the juvenile court erred in concluding his initial encounter with Thomson was consensual, and argues that the evidence derived from the nonconsensual encounter must therefore be suppressed. “Police contacts with individuals may be placed into three broad categories ranging from the least to the most intrusive: consensual encounters that result in no restraint of liberty whatsoever; detentions, which are seizures of an individual that are strictly limited in duration, scope, and purpose; and formal arrests or comparable restraints on an individual’s liberty. [Citations.] . . . Unlike detentions, [consensual encounters] require no articulable suspicion that the person has committed or is about to commit a crime. [Citation.]” (*In re Manuel G.* (1997) 16 Cal.4th 805, 821 (*Manuel G.*); see also *People v. Perez* (1989) 211 Cal.App.3d 1492, 1495 (*Perez*)). “[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.] “[I]n order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct

would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.' [Citation.] This test assesses the coercive effect of police conduct as a whole, rather than emphasizing particular details of that conduct in isolation. [Citation.] 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."

(*Manuel G.*, *supra*, 16 Cal.4th at p. 821.) Similarly, a detention has been found where an officer parked his patrol car against traffic and directed the defendant to stop. (*People v. Jones* (1991) 228 Cal.App.3d 519, 523 (*Jones*).)

The use of a spotlight without more does not convert a consensual encounter into a detention; rather, a person has been seized within the meaning of the Fourth Amendment when "taking into account all of the circumstances surrounding the encounter the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.' " (*Florida v. Bostick* (1991) 501 U.S. 429, 437 (*Bostick*); see also *People v. Franklin* (1987) 192 Cal.App.3d 935, 940 (*Franklin*).)

The court in *Perez* concluded the record supported the trial court's determination that the encounter between the defendant and police was consensual where the officer turned on his high beams and spotlights, stationed his patrol vehicle in front of defendant's vehicle, shone his flashlight into the vehicle, and asked the defendant to roll down the passenger window. The officer did not activate his emergency lights or block the defendant's car from leaving. (*Perez*, *supra*, 211 Cal.App.3d at p. 1496.) "While the use of high beams and spotlights might cause a reasonable person to feel himself the object of official scrutiny, such directed scrutiny does not amount to a detention. [Citations.]" (*Ibid.*) Similarly, in *People v. Rico* (1979) 97 Cal.App.3d 124, 130 (*Rico*), a police officer driving on the freeway in pursuit of suspects involved in a recent shooting turned on his spotlights to get a better look at the occupants of the vehicle. The suspects responded to the lights by voluntarily pulling their car over. (*Id.* at p. 129.) The court

concluded that the officer's momentary use of the spotlight, coupled with the absence of any unequivocal show of authority, were insufficient to establish that the encounter was a detention rather than a consensual encounter. (*Id.* at p. 130.) The court in *Franklin* reached a similar conclusion. There, police officers, who were patrolling in a high crime area, spotted the defendant wearing a camouflage trench coat in the summertime. (*Franklin, supra*, 192 Cal.App.3d at p. 938.) The officer shone his patrol car's spotlight on the appellant. After the appellant tried to conceal a white cloth-like object from the light, the officers pulled their patrol car up behind the appellant. The Court of Appeal concluded not only that "the spotlighting of appellant alone fairly can be said not to represent a sufficient show of authority so that appellant did not feel free to leave . . ." but also that the immediate act of pulling the patrol car to the curb behind appellant did not constitute "an 'additional overt action' [citation] sufficient to convince a reasonable man he was not free to leave." (*Id.* at p. 940.) In reaching this conclusion, the court held that the officer did not block appellant's way, direct verbal requests or commands to appellant, or exit his vehicle and pursue the appellant. (*Ibid.*)

The evidence supports the juvenile court's conclusion that the initial encounter between Minor and Thomson was voluntary. As Minor's truck was leaving the parking lot, Thomson activated the spotlight on his patrol car in its direction to illuminate the darkly lit area. Minor voluntarily stopped his vehicle. Thomson parked his patrol car in a manner that did not prevent Minor from leaving the parking lot. Thomson ordered Minor out of the truck only after he smelled alcohol and marijuana, saw physical evidence of his inebriation, and spotted an open can of beer in plain view. These facts support the conclusion that Minor's decision to stop his truck was a voluntary act and not a submission to a show of authority. None of the factors mentioned in *Manuel G.* as indicating a seizure is present here: Thomson was alone; there is no indication that he spoke to Minor commandingly, brandished a weapon, physically restrained Minor, or indicated in any other way that he would compel Minor to comply with his requests. (*Manuel G., supra*, 16 Cal.4th at p. 821.) Moreover, at no time did Thomson activate his siren or emergency lights or station his patrol car in a manner that prevented Minor from

driving away. (See *Perez, supra*, 211 Cal.App.3d at p. 1496; *Rico, supra*, 97 Cal.App.3d at p. 130; *Franklin, supra*, 192 Cal.App.3d at p. 938; compare *Jones, supra*, 228 Cal.App.3d at p. 523 [“A reasonable man does not believe he is free to leave when directed to stop by a police officer who has arrived suddenly and parked his car in such a way as to obstruct traffic”].) Thomson did not question Minor or order him to stop. (Compare *People v. Garry* (2007) 156 Cal.App.4th 1100, 1111 [officer bathed defendant in light, and walked quickly toward him while questioning him about his legal status]; *Jones, supra*, 228 Cal.App.3d at p. 523 [officer directed defendant to stop].) Nothing in the record indicates a reasonable person would interpret Thomson’s manner of approach, words, or actions as coercive.

In the circumstances, the juvenile court properly concluded Minor was not detained when he stopped his truck and Thomson approached. The court therefore correctly denied Minor’s suppression motion.

B. Probation Conditions

Among the terms of probation imposed by the juvenile court are three that Minor challenges on appeal: (1) he “shall not be present in any building, vehicle or be in the presence of any person or persons [] whom [he] knows possesses a firearm, ammunition, or other dangerous or deadly weapons or where such objects exist” (condition No. 21.3); (2) he “shall not wear any known or identified gang-related clothing or emblems” (condition No. 21.6); and, (3) he “shall not possess any known or identified gang-related paraphernalia, including, but not limited to gang graffiti, symbols, photographs, members rosters, or other gang writings and publications” (condition No. 21.7). Minor contends the probation conditions are unconstitutionally vague and overbroad because they do not include a requirement that he know what is required or prohibited. Constitutional challenges to a facially vague or overbroad probation condition are questions of law, which the Appellate Court reviews de novo. (*People v. Cromer* (2001) 24 Cal.4th 889, 894.) A “challenge to . . . [a] probation condition as facially vague and overbroad presents an asserted error that is a pure question of law. . . .” (*In re Sheena K.* (2007) 40 Cal.4th 875, 888.)

Under section 730, subdivision (b), a juvenile court may impose “any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” In spite of the juvenile court’s broad discretion, “[a] probation condition ‘must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,’ if it is to withstand a challenge on the ground of vagueness. [Citation.] A probation condition that imposes limitations on a person’s constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad. [Citation.]” (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 890.) “ ‘The underlying concern of the vagueness doctrine is the core due process requirement of adequate *notice*: [¶] “ ‘No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.’ [Citations.] ‘ . . . [¶] . . . Thus, a law that is ‘void for vagueness’ not only fails to provide adequate notice to those who must observe its strictures, but also ‘impermissibly delegates basic policy matters’ to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.’ ” ’ [Citations.]” (*In re H. C.* (2009) 175 Cal.App.4th 1067, 1070 (*H. C.*.)

In *People v. Lopez* (1998) 66 Cal.App.4th 615 (*Lopez*), the court addressed a probation condition barring the defendant from displaying gang-related indicia. There, the court held that the condition was overbroad because it prohibited the defendant from displaying indicia not known to be gang related. (*Id.* at p. 634.) The court modified the condition to specify its reference to indicia known by the defendant to be gang-related, and defined the term “gang” as a “ ‘criminal street gang,’ ” within the meaning of Penal Code section 186.22, subdivision (f). (*Id.* at p. 632.) On similar grounds, the court in *In re Victor L.* (2010) 182 Cal.App.4th 902, 912 (*Victor L.*), remedied a deficient probation condition forbidding the defendant’s presence in places where dangerous or deadly weapons or firearms exist by adding a knowledge component. There, the court held that “[d]ue process requires . . . that the probationer be informed *in advance* whether his

conduct comports with or violates a condition of probation.” (*Id.* at p. 913.) *H. C.* concerned a probation condition that prohibited the defendant from associating with any “ ‘known probationer, parolee, or gang member.’ ” The court concluded the condition was improper because it did not specify that the minor know that a person was a probationer, parolee, or gang member. (*In re H. C., supra*, 175 Cal.App.4th at pp. 1071-1072.) The court modified the condition to state that “[the defendant] will not associate with any person known to ‘[the defendant] to be on probation, on parole or a member of a criminal street gang.’ ” (*Id.* at p. 1072.)

Minor argues the conditions imposed on his probation suffer from the same deficiencies as those in *Lopez, Victor L.* and *H. C.*, that is, they are unconstitutionally vague or overbroad. Minor challenges condition No. 21.3 on the ground that it fails to specify the defendant know in advance that dangerous or deadly weapons are present in a place before violating the condition; he challenges condition No. 21.6 and condition No. 21.7 on the ground that they fail to inform him of what items he must avoid displaying or possessing in order to comply with the condition. Minor asks us to order the conditions modified to include a requirement that he know of the presence of weapons and that he know the items in question are gang-related. The Attorney General does not object to Minor’s proposed modifications. We agree that they are appropriate, and accordingly shall order the conditions so modified.

DISPOSITION

Condition No. 21.3 is modified to read: “You are not to be present in any building or vehicle, where you know one or more dangerous or deadly weapons or firearms or ammunition exists, or in the presence of any person who you know possesses such dangerous or deadly items.” Condition No. 21.6 is modified to read: “You are not to wear any clothing or emblems known by you or identified to you as being gang related.” Condition No. 21.7 is modified to read: “You are not to possess any paraphernalia known by you or identified to you as being gang related, including but not limited to gang graffiti, symbols, photographs, members rosters or other gang writings and publications.” As so modified, the order is affirmed.

RIVERA, J.

We concur:

RUVOLO, P.J.

SEPULVEDA, J.*

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.