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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

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

THE PEOPLE,
Plaintiff and Respondent,

v.

SALVADOR C.,
Defendant and Appellant.

A138060

(Contra Costa County
Super. Ct. No. J1201691)

I. INTRODUCTION

Appellant Salvador C. appeals from the jurisdictional and dispositional findings of the Contra Costa County Juvenile Court continuing him as a ward of the court in connection with one count of receiving stolen property. Appellant, a passenger in a stolen car, contends the juvenile court erred in denying his motion to suppress because he was arrested and searched without probable cause to believe he was involved in criminal activity. Appellant further contends that three probation conditions imposed by the juvenile court were unconstitutionally vague and must be modified. We will order modifications to the probation conditions, as we shall discuss, but otherwise affirm the judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

On January 14, 2013, the Contra Costa County District Attorney's office filed a supplemental wardship petition (Welf. & Inst. Code, § 602) alleging that appellant, then 17 years old and already a ward of the court, had received stolen property (Pen. Code, § 496, subd. (a)).

Appellant denied the petition and moved to suppress the evidence discovered as a result of what he alleged was an illegal search (Welf. & Inst. Code, § 700.1). The juvenile court held a combined suppression and jurisdictional hearing.

The evidence presented at the suppression hearing established that on November 21, 2012, at around 8:00 a.m., Jaime Wynn noticed that her red Honda Civic hatchback, bearing the license plate number 6FAL138, was no longer in front of her home in El Cerrito where she had parked it the night before. She immediately contacted the police.

Shortly before 7:00 p.m. that evening, San Pablo Police Officer Aaron Blaisdell was on vehicular patrol on San Pablo Avenue traveling southbound in the number two lane. He noticed a red Honda Civic in the number one lane because one of its rear taillights was not working and it was traveling at a slower speed than the surrounding traffic. Officer Blaisdell called in a radio check of the license plate number; dispatch informed him the vehicle had been reported stolen. He began to follow the car by moving into the number one lane.

The Honda moved into the number two lane; Officer Blaisdell followed. Because the car was stolen and could have contained drugs or firearms, departmental policy required the officer to conduct a felony or high risk stop. Officer Blaisdell was alone, so he requested backup.

As he continued to follow the Honda from a distance of about 20 feet away, Officer Blaisdell could see that it had two occupants. Both vehicles continued southbound on San Pablo Avenue, turned onto Van Ness Avenue for about three blocks, then turned westbound on Dover Avenue for seven or eight blocks before "loop[ing]" north onto 23rd Street.

During this pursuit, Officer Blaisdell “noticed that both of the occupants, the driver and the front passenger, repeatedly glanced back towards my vehicle and seemed to [be] fidgeting within the front compartment of the car.” He elaborated: “And it wasn’t only an act of looking back, it was the movement of their arms associated with looking back, as if maybe something was being hidden, or they were thinking about running or there may have been a weapon associated with the stop.”

The Honda pulled into a parking lot on 23rd Street. At that time, Officer Blaisdell’s patrol car and either two or three other marked units “converged on that immediate area from multiple directions.” Officer Blaisdell activated his emergency lights, pulled up bumper to bumper with the Honda, got out of his vehicle, drew his service pistol and pointed it at the Honda. Using his patrol vehicle door as a shield, he told the occupants to put their hands in view. He directed the driver to throw his keys from the window, but the driver did not comply. He then ordered the driver to get out of the car and move toward another officer, who placed him in custody.

Officer Blaisdell then ordered the passenger, later identified as appellant, to get out of the car. When appellant got out of the car, the officer recognized him from “previous contacts . . . involving property crimes.” Officer Blaisdell directed appellant to walk toward Officer Vanessa Avalos. Officer Avalos handcuffed appellant. She testified that she handcuffed him for officer safety because he was in a stolen vehicle. She had been trained that “after a high-risk stop, you automatically handcuff everyone.” Officer Avalos then searched appellant and found a shaved key of the type commonly used to steal cars in appellant’s left front pants pocket.

In the meantime, Officers Blaisdell and Malgosa searched the Honda. Officer Blaisdell saw a single key “jammed into the ignition that was not the proper key for the vehicle.” The key appeared to be protruding about 50 percent farther than a normal key. He struggled to remove the key and was unable to reinsert it after getting it out of the ignition.

Appellant was transported to the police station where Officer Blaisdell questioned him. Appellant said he and Juan Mendosa, the driver, had found the car near appellant’s

house. The doors were unlocked and the radio was playing. Appellant believed the car was a “bolo,” or stolen car. Regarding the shaved key found by Officer Avalos in appellant’s pocket, appellant said he found it on the floorboard of the Honda. Appellant said he knew nothing about the key that was forced into the ignition. Appellant estimated that he was in the car about five minutes before police stopped it.

About 12 hours after filing the police report, Wynn received a call from police notifying her that the Honda had been found. When she went to the tow yard to pick up the vehicle, she noticed that some of her art supplies were missing and that stationery from an art project was scattered throughout the car. There were also items in the car (a can of sardines, a piece of black fabric or clothing, and a charger) that she did not recognize.

On February 11, 2013, the juvenile court denied the motion to suppress and sustained the petition. At the dispositional hearing on February 27, 2013, the court continued appellant’s wardship and probation, and ordered him committed to the Orrin Allen Youth Rehabilitation Facility for six months. The court found the offense to be a felony and set the maximum custody time for three years and 110 days. The court also set various probation conditions, both verbally and in written orders.

Appellant filed a timely notice of appeal.

III. DISCUSSION

A. The Motion to Suppress.

Appellant contends he was illegally arrested because the officers lacked probable cause to believe that he was involved in illegal activity. As a result, the search incident to his arrest was illegal and the resulting evidence, the shaved key found in his pocket and his subsequent incriminating statement at the police station, were the inadmissible products of the violation of his Fourth Amendment rights and should have been suppressed. Alternatively, appellant argues, if he were merely detained and not arrested, the search exceeded a permissible pat-down under the Fourth Amendment and the evidence should still have been suppressed.

1. *Standard of Review.*

“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.]” ’ ” (*In re Lennies H.* (2005) 126 Cal.App.4th 1232, 1236; see also *People v. Glaser* (1995) 11 Cal.4th 354, 362.) We accept the trial court’s express or implied findings of fact if supported by substantial evidence. (*People v. Williams* (1988) 45 Cal.3d 1268, 1301.) This includes deferring to the trial court’s assessment of the credibility of witnesses, resolution of conflicts in the testimony, weighing of the evidence, and drawing of factual inferences in making its factual findings. (*People v. Lawler* (1973) 9 Cal.3d 156, 160.) We then exercise our independent judgment in applying the law to the factual findings to determine whether the factual record supports the trial court’s conclusions as to whether or not the search or seizure met the constitutional standard of reasonableness. (*Ornelas v. United States* (1996) 517 U.S. 690, 696-698; *People v. Glaser, supra*, 11 Cal.4th at p. 362; *People v. Lawler, supra*, 9 Cal.3d at p. 160.)

2. *The Juvenile Court’s Ruling.*

In ruling on appellant’s motion to suppress, the juvenile court articulated alternative theories under which the seizure of appellant was lawful. First, the court found probable cause for the arrest based on the factual circumstances, particularly the report of the stolen car and the movement of both occupants within the passenger compartment. The court found it “very significant” that “the two occupants of the car, the driver and the minor, both looked back three or more times while the police officer was following the car, having already received a report that it was stolen.”

Second, “there is an equally good argument that the police officer detained the minor. I understand that he was in handcuffs and I understand that he was in a police car. Both are valid methods of effecting a detention under certain circumstances. Those circumstances clearly appeared here. It was a felony car stop on a report of a stolen car.”

The court found that the detention ripened into an arrest upon the discovery of evidence at the scene.

3. *Analysis.*

The Fourth Amendment, made applicable to the states by the Fourteenth Amendment, prohibits unreasonable searches and seizures. (U.S. Const., 4th Amend.) Our state constitution includes a similar provision. (Cal. Const., art. 1, § 13.) “ ‘A seizure occurs whenever a police officer “by means of physical force or show of authority” restrains the liberty of a person to walk away.’ (*People v. Souza* (1994) 9 Cal.4th 224, 229, quoting *Terry v. Ohio* (1968) 392 U.S. 1, 19, fn. 16 [(*Terry*)).]” (*People v. Celis* (2004) 33 Cal.4th 667, 673.)

“When the seizure of a person amounts to an arrest, it must be supported by an arrest warrant or by probable cause. (*Kaupp v. Texas* [(2003)] 538 U.S. [626,] 630.) Probable cause exists when the facts known to the arresting officer would persuade someone of ‘reasonable caution’ that the person to be arrested has committed a crime. (*Dunaway v. New York* (1979) 442 U.S. 200, 208, fn. 9.) ‘[P]robable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts.’ (*Illinois v. Gates* (1983) 462 U.S. 213, 232.) It is incapable of precise definition. (*Maryland v. Pringle* (2003) 540 U.S. 366, 371.) ‘ “The substance of all the definitions of probable cause is a reasonable ground for belief of guilt,” ’ and that belief must be ‘particularized with respect to the person to be . . . seized.’ (*Ibid.*)”

“But ‘not all seizures of the person must be justified by probable cause to arrest for a crime.’ (*Florida v. Royer* (1983) 460 U.S. 491, 498 (plur.opn. of White, J.)) In [*Terry*], *supra*, 392 U.S. 1, the United States Supreme Court created a limited exception that allows police officers to ‘stop and . . . frisk for weapons’ when they have an ‘articulable suspicion [the] person has committed or is about to commit a crime.’ (*Florida v. Royer, supra*, at p. 498.) Thus, an officer who lacks probable cause to arrest can conduct a brief investigative detention when there is ‘ “some objective manifestation” ’ that criminal activity is afoot and that the person to be stopped is engaged in that activity.’ (*People v. Souza, supra*, 9 Cal.4th at p. 230; see also *United*

States v. Cortez (1981) 449 U.S. 411, 417.) Because an investigative detention allows the police to ascertain whether suspicious conduct is criminal activity, such a detention ‘must be temporary and last no longer than is necessary to effectuate the purpose of the stop.’ (*Florida v. Royer, supra*, at p. 500; see also *Wilson v. Superior Court* (1983) 34 Cal.3d 777, 784 [describing a detention as limited in ‘duration, scope and purpose’].)” (*Celis, supra*, 33 Cal.4th at pp. 673-674.)

a. Probable Cause to Arrest.

Appellant does not argue that Officer Blaisdell was not justified in stopping the car and detaining him. Clearly, the report that the vehicle was stolen required the officer to detain the occupants and investigate. Appellant’s contention is that, under the circumstances, the officer did not have probable cause, i.e., a reasonable ground for believing that appellant had committed a crime, to arrest him. Although it is a close question, we disagree.

As we described above, appellant was one of two occupants, the front seat passenger, in the stolen red Honda Civic. It was a high-crime area and dark outside. After calling for back-up in order to effect a felony or high-risk stop of the Honda, and while following it as it made several turns, the officer saw both occupants repeatedly glance back toward his vehicle, each “three or more times.” The officer also observed both occupants moving as though “reaching around for stuff and fidgeting.” Officer Blaisdell testified that, based on what appeared to be furtive movement of the occupants inside a stolen car and their obvious awareness that he was following them, he was concerned that there could be a weapon present or they might be trying to hide something. In addition, when appellant stepped out of the car, Officer Blaisdell recognized him from prior contacts “involving property crimes.”

From these facts, we think it a reasonable inference that the occupants of the vehicle were engaged together in criminal activity. The officers had probable cause to believe that appellant, together with the driver, committed a crime related to the stolen Honda, and he was properly placed under arrest.

Citing aspects of the officers' testimony regarding departmental policy with respect to stopping stolen vehicles, appellant contends the police arrested him solely because he was a passenger in a stolen car. He argues this violates the requirement that probable cause must be "particularized with respect to that person." (*Ybarra v. Illinois* (1979) 444 U.S. 85, 91.) In particular, appellant relies on *People v. Williams* (1970) 9 Cal.App.3d 565, in which the defendant was a passenger in a vehicle pulled over for a traffic violation. The driver could produce no identification or registration; a record check revealed that the license plate had been issued to a vehicle that had been reported stolen. Both occupants were arrested and taken to the police station where marijuana was found on the defendant. The appellate court held that the evidence of the marijuana should have been suppressed because there was "no indication that defendant was jointly engaged in any activity, legal or illegal, except as a passenger." (*Id.* at p. 569.) Here, by contrast, while driving behind the Honda, Officer Blaisdell observed both occupants looking back at him repeatedly and moving around in the front seat such that he suspected they were trying to hide something, possibly a weapon. Under the circumstances, we find this was sufficient evidence for Officer Blaisdell to draw an inference that appellant was jointly involved with the driver in suspected illegal activity. (See *People v. Williams* (1971) 17 Cal.App.3d 275, 278.)

Appellant makes much of the fact that he was not questioned at the scene about what he was doing in the car or his relationship to the driver, but no such inquiry of appellant was necessary to provide probable cause. (Compare *People v. Williams, supra*, 9 Cal.App.3d at pp. 568-569; *In re Justin B.* (1999) 69 Cal.App.4th 879, 887 [police lacked probable cause to arrest minor where minor had merely been a passenger in a car that contained suspected stolen property].)

We also reject appellant's contention that the police arrested him "automatically" based on his mere presence in a stolen vehicle, pursuant to an unconstitutional departmental policy to arrest all occupants of stolen vehicles. San Pablo Police Department policies notwithstanding, and as we have just discussed, the evidence

supported an inference that appellant was no mere passenger, but rather was engaged in joint activity with the driver.

Next, appellant contends the evidence of his movements in the car and Officer Blaisdell's recognizing him from previous contacts cannot justify the arrest because there was no evidence that Officer Blaisdell communicated this information to Officer Avalos. Instead, appellant argues, Officer Avalos, who actually made the arrest, took appellant into custody "solely because he had been a passenger in a stolen car." The Attorney General responds that an officer may properly act on the collective knowledge of other investigating officers, and that, here, Officer Avalos was acting under the direction of Officer Blaisdell, who had observed all of the events and circumstances constituting probable cause. On reply, appellant argues both that the prosecution waived this contention by failing to argue it in the juvenile court and that the collective or imputed knowledge doctrine is inapplicable here on the facts. Neither of appellant's contentions has merit, and this is, rather, a textbook application of the imputed knowledge doctrine.

A law enforcement officer may make an arrest based on information furnished by other law enforcement officers as long as the collective knowledge of the officers provides probable cause for the arrest. (*Remers v. Superior Court* (1970) 2 Cal.3d 659, 666-667; *People v. Ramirez* (1997) 59 Cal.App.4th 1548, 1553; *People v. Alcorn* (1993) 15 Cal.App.4th 652, 655.) " '[W]hen it comes to justifying the total police activity in a court, the People must prove that the source of the information is something other than the imagination of an officer who does not become a witness.' [Citations.]" (*Remers v. Superior Court, supra*, 2 Cal.3d at p. 666.) The arresting officer's reliance on the information provided by other officers must be reasonable, but the arresting officer does not need to know the nature or extent of the probable cause. (*People v. Ramirez, supra*, 59 Cal.App.4th at pp. 1554-1555.) "[T]he important question is not what each officer knew about probable cause, but how valid and reasonable the probable cause was that developed in the officers' collective knowledge." (*Id.* at p. 1555.) Consequently, courts look at the total law enforcement activity to determine the constitutionality of the arrest. (*People v. Alcorn, supra*, 15 Cal.App.4th at p. 656.)

The collective knowledge of the officers here was based on Officer Blaisdell's knowledge and observations. This was sufficient, as we have discussed, to provide probable cause to arrest appellant. Officer Avalos did not need independent probable cause to effect the arrest, and she did not need to be informed by Officer Blaisdell of the particulars, as long as she acted in reasonable reliance on his information. (See *People v. Ramirez, supra*, 59 Cal.App.4th at pp. 1555-1556.) Officer Avalos's reliance was reasonable because it was based on factual information and the personal observations of another officer with whom she was participating in a coordinated operation to make a felony car stop. (See *People v. Poehner* (1971) 16 Cal.App.3d 481, 488-489.) The reliance was reasonable for the additional reason that Officer Blaisdell was actually present at the scene when Officer Avalos arrested appellant.

Appellant's contention that the collective knowledge doctrine was waived has no merit because it was not the prosecutor's burden to raise this argument in the juvenile court. At the suppression hearing, both Officer Blaisdell and Officer Avalos testified; at no time did appellant argue that Officer Avalos lacked probable cause to arrest because she did not know what Officer Blaisdell knew and observed.

Appellant's other contention, that Officer Avalos did not act at Officer Blaisdell's direction or rely on his knowledge in arresting appellant, is similarly without merit. Appellant cites Officer Avalos's testimony regarding departmental procedure in high-risk vehicle stops to suggest that she was acting automatically and without regard for the specific factual situation before her. However, it is apparent that Officer Avalos was not operating in a vacuum. Officer Avalos responded to Officer Blaisdell's radio call for backup to make the stop; Officer Blaisdell directed appellant to walk toward Officer Avalos, who then placed him in handcuffs. Clearly, she relied on Officer Blaisdell's probable cause determination, and properly so.

Next, appellant addresses the factual circumstances that led Officer Blaisdell to conclude there was probable cause to arrest appellant. First, appellant contends that the fidgeting and movement Officer Blaisdell observed on the part of appellant and the driver were insufficient to permit a reasonable inference that appellant was involved with the

driver in stealing the Honda. Appellant argues that Officer Blaisdell testified that “such behavior was common, stating that people looked at him nervously ‘all day, every day.’ ” This argument does not advance appellant’s cause, for three reasons. First, the determination of probable cause is based on the totality of the facts, so separating out and separately analyzing each item of evidence is not helpful. Second, appellant was not charged with stealing the Honda; he was charged with receiving stolen property. Third, we disagree with appellant’s characterization of the testimony. On cross-examination, the following colloquy took place:

“[Defense Counsel]: Okay. So the Honda was originally in the number one lane, you went behind it, correct:

“[Officer Blaisdell]: Um-hum.

“[Defense Counsel]: Then the Honda switched over to the number two lane and you went behind it again, correct?

“[Officer Blaisdell]: Correct.

“[Defense Counsel]: And it was at that point that the driver and the passenger glanced back at you, correct?

“[Officer Blaisdell]: It was several times. That was the first time that I remember observing them glance back at me.

“[Defense Counsel]: Okay. And would you agree that it’s not uncommon for drivers in vehicles to look at a uniformed police officer in the patrol car as they are driving by them.

“[Officer Blaisdell]: I would definitely agree with you. It happens to me all day, everyday.”

Contrary to appellant’s argument, it is apparent that Officer Blaisdell did not describe appellant’s behavior as “common” and indistinguishable from that of countless individuals he encounters daily in doing his job. Appellant makes the further argument on reply that his nervous movements in addition to his presence in a stolen car do not “lead to a reasonable inference” that he stole the Honda because his nervous movements

coincided with the officer's lane changes and efforts to stay close behind the Honda and, thus, were a "normal reaction." The contention fails for the reasons just stated.

Similarly, appellant argues that his prior contacts with Officer Blaisdell do not "lead to a reasonable inference that [appellant] had stolen the Honda with [the driver]." This is so, appellant contends, because the prosecution did not introduce any evidence regarding the prior contact, and thus there were "no facts or circumstances from which a reasonable person could have inferred that [appellant] was involved in theft of the Honda merely because he had had prior 'contact' with Officer Blaisdell." Moreover, Officer Blaisdell testified that his recognizing appellant played no part in the way he effected the stop of the vehicle and the seizure of appellant. Appellant accurately characterizes Officer Blaisdell's testimony on this point, but the larger point is that the officer's recognizing appellant is simply one more fact to be considered in determining whether the totality of the circumstances provided probable cause to believe he was involved in criminal activity. In our view, they did.¹

b. Detention Followed by Arrest.

As an alternate theory of admissibility, the juvenile court ruled that appellant was lawfully detained by Officer Avalos. During the detention, Officer Blaisdell found the ill-fitting key protruding from the ignition. That discovery, the court concluded, justified appellant's arrest. Appellant challenges this theory, arguing that he was never detained at the scene; he was arrested. Additionally, even if he was detained, the search of his pocket was more intrusive than permitted by *Terry, supra*, 392 U.S. 1.

"[T]here is no hard and fast line to distinguish permissible investigative detentions from impermissible de facto arrests. Instead, the issue is decided on the facts of each case, with focus on whether the police diligently pursued a means of investigation

¹ Appellant's final argument with respect to probable cause concerns the ill-fitting key in the ignition found by Officer Blaisdell upon inspecting the Honda at the scene. The parties disagree on whether the key was found before or after appellant was placed under arrest. The juvenile court's probable cause analysis did not include the key. Therefore, we will consider the key in connection with the issue of whether reasonable suspicion to detain appellant ripened into probable cause to arrest him.

reasonably designed to dispel or confirm their suspicions quickly, using the least intrusive means reasonably available under the circumstances.’ [Citations.] Important to this assessment, however, are the ‘duration, scope and purpose’ of the stop. [Citation.]” (*Celis, supra*, 33 Cal.4th at pp. 674-675.) With regard to the scope of the intrusion, the Supreme Court observed that stopping a suspect at gunpoint and handcuffing him “do not convert a detention into an arrest. (*Id.* at p. 675, and cases cited therein.) Also significant “are the facts known to the officers in determining whether their actions went beyond those necessary to effectuate the purpose of the stop, that is, to quickly dispel or confirm police suspicions of criminal activity.” (*Id.* at pp. 675-676, citing *Florida v. Royer, supra*, 460 U.S. at p. 500; *In re Carlos M.* (1990) 220 Cal.App.3d 372, 384.)

The use of handcuffs and a firearm was appropriate here. Under the circumstances, the restraints were reasonably necessary, and the officers’ actions did not exceed what was required to quickly confirm or dispel police suspicions of criminal activity. (See *Celis, supra*, 33 Cal.4th at pp. 675-676; *In re Antonio B.* (2008) 166 Cal.App.4th 435, 441.) As we have already detailed, the officers had to make a felony stop in a high-crime area, and it was dark outside. Officer Blaisdell testified that stolen vehicles are often associated with firearms and narcotics. The movements of both occupants in the car, which looked to Officer Blaisdell as though they were trying to hide something or may have been preparing to flee, and which were of substantial concern to the juvenile court, caused the officer to suspect that appellant was involved with the driver in criminal activity involving the stolen car. Moreover, it is clear from the record that the detention was brief. As soon as Officer Blaisdell saw the ill-fitting key protruding from the ignition, establishing knowledge that the car was stolen, the officer’s reasonable suspicion of criminal activity ripened into probable cause to arrest.

Appellant raises several arguments in disputing that he was ever detained at the scene. First, he contends that the officers arrested him and did not merely detain him because both Officer Blaisdell and Officer Avalos testified that they were “arresting” him. However, as the juvenile court noted, “what a police officer calls [a seizure] isn’t dispositive.” If the circumstances, viewed objectively, justify the officer’s action, then

regardless of the officer's state of mind, there is no Fourth Amendment violation. (*Scott v. United States* (1978) 436 U.S. 128, 138.) In other words, the challenged action is examined "under a standard of objective reasonableness without regard to the underlying intent or motivation of the officers involved." (*Ibid.*, and cases cited therein.)

Second, appellant argues that he was arrested, and not merely detained, because neither officer questioned him regarding his involvement, i.e., he was not held "to permit a speedy, focused investigation to confirm or dispel individualized suspicion of criminal activity." (See *People v. Gentry* (1992) 7 Cal.App.4th 1255, 1267; *In re Carlos M.*, *supra*, 220 Cal.App.3d at p. 384, citing *United States v. Sharpe* (1985) 470 U.S. 675, 683-686.) No questioning at the scene was necessary; Officer Blaisdell's suspicion of criminal activity was confirmed almost immediately upon discovery of the key in the ignition.

Third, appellant argues that the use of handcuffs and the firearm were more intrusive than reasonably necessary for a detention and constituted a de facto arrest. Appellant cites a number of cases for the proposition that police may only handcuff a suspect or use a firearm during a detention if they have a "specific" and "reasonable basis for believing the suspect poses a present physical threat or might flee." (See, e.g., *People v. Stier* (2008) 168 Cal.App.4th 21, 27; *In re Antonio B.*, *supra*, 166 Cal.App.4th at pp. 441-442.) Here, appellant argues that he obeyed all of Officer Blaisdell's orders and did not attempt to flee. In addition, the police were not outnumbered and they did not have reason to suspect that appellant was armed or that he had committed or was about to commit a violent felony. We disagree. Under the circumstances, particularly Officer Blaisdell's concern that appellant and the driver were trying to hide something or preparing to flee, as we have stated, the officers' use of a firearm and handcuffs to effect the detention was not unreasonable.

Fourth, appellant contends the officers arrested him in reliance on a departmental policy regarding high risk vehicle stops requiring them to have weapons drawn and to automatically handcuff the vehicle's occupants. Thus, appellant argues, the particular circumstances of the encounter played no part in determining whether to use restraints.

Appellant relies on *In re Antonio B.*, *supra*, 166 Cal.App.4th at page 442, in which the court concluded that the officer's "policy" of handcuffing all suspects regardless of the circumstances of the detention was unconstitutional because it "ignor[ed] the [Fourth Amendment] directive that a detention . . . us[e] the least intrusive means reasonably available" *Antonio B.* is distinguishable on its facts. In *Antonio B.*, the minor and another individual were walking side-by-side down a street in the middle of the afternoon. The minor's companion was smoking a marijuana cigarette. Three plainclothes police officers approached them and identified themselves. The companion who was smoking immediately threw the marijuana cigarette to the ground. One of the officers picked it up, identified it by smell, and the companion was arrested. The minor was handcuffed, after which one of the officers asked for permission to search him. He consented, and the officer found illegal drugs. (*Id.* at pp. 438-439.) At the suppression hearing, the officer who handcuffed the minor testified that he handcuffed anyone he detained for further investigation as a matter of policy and procedure. (*Id.* at p. 439.)

In finding the use of handcuffs on the minor was not warranted, the court explained that the police detained him because he was walking with another teenager who was smoking marijuana; the officers believed that the minor might also have been smoking marijuana, a misdemeanor. Under the circumstances, including that the officers outnumbered the suspects, one of whom was in handcuffs incident to his valid arrest, there was no one else around, and the minor did not attempt to flee, there was no evidence that the officers had any basis to believe that the minor posed a danger to them or that handcuffing him was necessary to determine whether he had been smoking marijuana. (*In re Antonio B.*, *supra*, 166 Cal.App.4th at p. 442.) As for the officer's "policy" of handcuffing any suspect he detained, the court stated that this practice "ignores the constitutional directive that a detention based upon reasonable suspicion of criminal activity must be conducted using the least intrusive means reasonably available under the circumstances of that particular detention." (*Id.* at p. 442, citing *Celis*, *supra*, 33 Cal.4th at pp. 674-675.) Due to the unnecessary handcuffing, the seizure constituted

an arrest rather than a detention. The arrest was unsupported by probable cause, and thus it was illegal. (*In re Antonio B.*, *supra*, 166 Cal.App.4th at p. 442.)

Here, by contrast, the use of handcuffs and a firearm was reasonable under the circumstances. In addition to citing departmental policy for high-risk vehicle stops, Officer Blaisdell explained that he did not know “if there [were] any weapons in the vehicle,” and he had “concerns for [his] safety based on the fact that the vehicle was stolen and the movements inside of the occupants.” Although appellant further argues that any threat he could have posed to Officer Blaisdell was eliminated once the other patrol cars arrived, the Honda stopped, and both occupants put their hands into view, we disagree. Courts have recognized that traffic stops are “especially fraught with danger to police officers” (*Michigan v. Long* (1983) 463 U.S. 1032, 1047), and we will not second-guess the officers’ decision in this instance to use handcuffs and a firearm to effect the detention. (See *People v. Dickey* (1994) 21 Cal.App.4th 952, 957 [observing that “[t]he judiciary should not lightly second-guess a police officer’s decision to perform a pat-down search for officer safety”].)

Finally, appellant argues that Officer Blaisdell’s observations of appellant’s movement in the car had no evidentiary significance because there was no indication that Officer Blaisdell communicated that information to Officer Avalos. We have already rejected this argument. (See *People v. Ramirez*, *supra*, 59 Cal.App.4th at pp. 1552-1558.)

c. The Search of Appellant.

Appellant argues that, whether he was under arrest or merely detained at the time he was handcuffed, the warrantless search cannot be justified. First, the search was illegal as a search incident to arrest because the police lacked probable cause to arrest him. “It is well settled that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment.” (*United States v. Robinson* (1973) 414 U.S. 218, 224.) The underlying arrest must itself be valid for the search incident to arrest principle to apply. (*Chimel v. California* (1969) 395 U.S. 752, 762-763.)

Accordingly, if appellant was lawfully arrested, i.e., with probable cause, then the search

of appellant, incident to arrest, which yielded the key in his pocket, was also lawful. In section III.A.3.a., above, we concluded that the officers had probable cause to arrest appellant at the time Officer Avalos handcuffed him. Accordingly, under this theory of admissibility, Officer Avalos lawfully searched appellant's pocket and retrieved the shaved key.

Alternatively, appellant argues that, if he was detained, and assuming the police were authorized to conduct a *Terry* pat-down search for weapons, the search was excessive in scope because the officer searched into his pockets and clothing, and a key could not reasonably be thought to be a weapon. In *Terry, supra*, 392 U.S. 1, the United States Supreme Court held that an officer could conduct a limited pat-down search of an individual if the officer had "specific and articulable" facts that would lead a reasonable person to suspect that the individual was armed and dangerous. (*Id.* at pp. 21, 27.) Since the "sole justification" for such a search is "the protection of the police officer and others nearby, . . . it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer." (*Id.* at p. 29.)

Regardless of whether Officer Avalos would have been justified in conducting a pat-down search for weapons, the search of appellant here was not a *Terry* pat search. Officer Avalos was not patting down appellant for weapons; she was searching him incident to his arrest. Thus, we must determine whether, at the time he was searched, the officers had probable cause to arrest him.

At the scene, Officer Blaisdell ordered appellant to walk over to Officer Avalos, at which time Officer Avalos directed her attention to appellant. She handcuffed him and then searched him. In the meantime, Officer Blaisdell's attention was on the stolen Honda. He walked over to it and spotted the ill-fitting key in the ignition, which established knowledge that the car was stolen and justified the arrest. There is no explicit finding by the trial court as to whether the key in the ignition was discovered before appellant was searched, but it is clear that the two events took place very close in time. Viewing the record in the light most favorable to the judgment, and drawing the inference

in favor of the juvenile court's ruling, the discovery of the key in the ignition preceded the search and provided probable cause to arrest appellant. The ensuing search was incident to his arrest.

B. *The Probation Conditions.*

Appellant contends that three probation conditions imposed by the juvenile court must be stricken or modified because they are unconstitutionally vague.

1. *Background.*

At the dispositional hearing, the juvenile court imposed various probation conditions, three of which appellant challenges herein. First, from the bench, the court ordered that appellant "shall not frequent any areas where gang members are known by you to congregate or known by you to be areas of gang-related activity, or that the probation officer tells you is a person you cannot associate with because he is a gang member, or that you are in an area frequented by gang members" In a supplemental minute order, appellant was ordered: "You shall not participate in any gang activity. You shall not visit or remain in any specific location known to you to be, or that the Probation Officer tells you is an area of gang activity."

Second, the court ordered: "You are not to use or possess any . . . burglary tools, including but not limited to, shaved keys."

Third, the court ordered appellant "not to use or possess any weapons"

2. *Legal Principles.*

In placing a minor on probation, the juvenile court "may make any and all reasonable orders for the conduct of the ward . . . [and] may impose and require 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." (Welf. & Inst. Code, § 730, subd. (b).) "A juvenile court enjoys broad discretion to fashion conditions of probation for the purpose of rehabilitation and may even impose a condition of probation that would be unconstitutional or otherwise improper so long as it is tailored to specifically meet the needs of the juvenile. [Citation.]" (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5.)

However, juvenile probation conditions must not be unconstitutionally vague or overbroad. A law is void for vagueness if it is “ ‘ ‘ ‘so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.’ ” ’ ’ ’ ” (*In re Sheena K.* (2007) 40 Cal.4th 875, 890 (*Sheena K.*), quoting *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1115.) Thus, “[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.]” (*Sheena K., supra*, 40 Cal.4th at p. 890.) Regarding overbreadth: “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.]” (*Ibid.*)

A constitutional challenge to a probation condition is cognizable on appeal despite the failure to raise the issue in the lower court where it presents a pure question of law that may be resolved without reference to the sentencing record. (*Sheena K., supra*, 40 Cal.4th at pp. 887-889.) As in *Sheena K.*, appellant’s contentions here present “pure question[s] of law, easily remediable on appeal by modification of the condition.” (*Id.* at p. 888.)

3. *Analysis.*

Appellant challenges the juvenile court’s verbal order imposing a gang-related condition on the ground that the term “frequent” is unconstitutionally vague. (*People v. Sanchez* (2003) 105 Cal.App.4th 1240, 1243-1244 [concluding that the term “areas frequented” had “no fixed meaning” and was impermissibly vague]; see also *People v. Leon* (2010) 181 Cal.App.4th 943, 952 [condition that “ ‘You’re not to frequent any areas of gang-related activity’ ” modified to “ ‘You are not to visit or remain’ ”]). Appellant proposes that the orally pronounced condition be stricken and that the gang-related conditions as stated in the supplemental minute order be substituted. Respondent does not object. We will so order.

Appellant also challenges the probation condition ordering that he not possess burglar tools as unconstitutionally vague because it lacks a knowledge requirement and

does not require intent for use as a burglar tool. Appellant argues that this condition should be modified to require that he “ ‘not possess burglar tools, as defined in Penal Code section 466,’ ” in order to ensure fair notice and that he not be punished for possessing otherwise innocuous items. Penal Code section 466 forbids the possession of burglary tools and requires both knowing possession and intent for use as burglary tools.² Respondent does not dispute that a probation condition prohibiting possession of certain items must include a knowledge requirement in order to pass constitutional muster. However, citing *People v. Kim* (2011) 193 Cal.App.4th 836, 846-847 (*Kim*), respondent posits that “the congruency of the statute obviates the necessity of modifying the probation condition.”

In *Kim*, a condition of probation prohibited the defendant from owning, possessing, or having within his custody or control any firearm or ammunition under Penal Code sections 12021 and 12316, subdivision (b)(1). (*Kim, supra*, 193 Cal.App.4th at p. 840.) The defendant challenged the condition for lack of a knowledge requirement. The court declined to modify the condition, explaining that “where a probation condition implements statutory provisions that apply to the probationer independent of the condition and does not infringe on a constitutional right, it is not necessary to include in the condition an express scienter requirement that is necessarily implied in the statute.” (*Id.* at p. 843.) Unlike *Kim*, the probation condition here does not expressly reference statutory provisions that contain a knowledge requirement.

We note that there is debate over whether probation conditions must contain an *express* knowledge requirement. (Compare *People v. Patel* (2011) 196 Cal.App.4th 956,

² Penal Code section 466 provides, in relevant part: “Every person having upon him or her in his or her possession a picklock, crow, keybit, crowbar, screwdriver, vise grip pliers . . . or other instrument or tool with intent feloniously to break or enter into any building . . . or vehicle . . . or who shall knowingly make or alter, or shall attempt to make or alter, any key or other instrument named above so that the same will fit or open the lock of a building . . . or vehicle . . . without being requested to do so by some person having the right to open the same, or who shall make, alter, or repair any instrument or thing, knowing or having reason to believe that it is intended to be used in committing a misdemeanor or felony, is guilty of a misdemeanor.”

960 [holding that scienter requirement will be deemed to be present in all probation conditions restricting presence, possession, or association] with *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1351 [declining to follow the *Patel* approach; choosing to modify probation conditions on a case-by-case basis to include a knowledge requirement]; *People v. Moses* (2011) 199 Cal.App.4th 374, 381 [same]; *People v. Freitas* (2009) 179 Cal.App.4th 747, 752 [probation condition prohibiting possession of firearms requires modification to make knowledge requirement explicit].) We will continue to follow the Supreme Court’s approach in *Sheena K.*, *supra*, 40 Cal.4th at page 892, that “modification to impose an explicit knowledge requirement is necessary to render the condition constitutional.” (See *People v. Pirali*, *supra*, 217 Cal.App.4th at p. 1351.) Accordingly, and in an abundance of caution, we will modify the probation condition to include an explicit knowledge requirement and to incorporate the provisions of Penal Code section 466.

Finally, appellant challenges the probation condition ordering him not to use or possess any weapons as unconstitutionally vague because it fails to provide “an ‘explicit standard’ for identifying what objects could be encompassed within its prohibition” or “a comprehensible reference as to what is prohibited,” noting that the prohibition “could potentially include many innocuous objects used in everyday life” Appellant requests that this condition be modified to prohibit possession of “ ‘deadly or dangerous weapons.’ ” (See *In re R.P.* (2009) 176 Cal.App.4th 562, 568.)

Respondent contends that the term *weapons* is sufficiently precise to pass constitutional muster, and that appellant’s proposed modification to prohibit only the possession of dangerous or deadly weapons could “unnecessarily confine the power of the juvenile court to control and reform appellant’s behavior.” Consequently, respondent suggests that, if the term *weapons* is overbroad, the condition be modified “to include (1) the possession of dangerous and deadly weapons and (2) the purposeful possession of items capable of being used as weapons.”

We agree with appellant that this probation condition is vague in that it fails to adequately identify the objects that are encompassed within its ambit. (See *In re R.P.*,

supra, 176 Cal.App.4th at p. 568.) Although the Attorney General provides no explanation, we understand the second part of its proposed modification as seeking to make explicit the prohibition on possessing, in addition to items specifically designed as weapons, “other items not specifically designed as weapons that the probationer intended to use to inflict, or threaten to inflict, great bodily injury or death.” (See *People v. Moore* (2012) 211 Cal.App.4th 1179, 1186, discussing *In re R.P.*, *supra*, 176 Cal.App.4th at pp. 568, 570.) In his reply brief, appellant does not challenge the Attorney General’s proposed modification. We will modify the probation condition as set forth below.

IV. DISPOSITION

The orally pronounced gang-related probation condition shall be stricken and replaced by the Supplemental Minute Order Gang Conditions. The juvenile court’s minute order for the disposition hearing, specifically, the probation condition requiring that appellant not use or possess “weapons” or “burglary tools,” including but not limited to “shaved keys,” shall be amended as follows: “You are not to knowingly use or possess any dangerous or deadly weapons or other items capable of being used in a dangerous or deadly manner with the intent to so use them. You are not to knowingly

use or possess any burglary tools, including but not limited to shaved keys, as provided in Penal Code section 466.” In all other respects, the judgment is affirmed.

Haerle, J.

We concur:

Kline, P.J.

Richman, J.