

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

EZRA ORIN ADAMS,

Defendant and Appellant.

A143570

(San Mateo County
Super. Ct. No. SC080334)

I.

INTRODUCTION

In March 2014, appellant Ezra Orin Adams was charged with committing multiple offenses between December 2012 and December 2013. After pleading no contest to felony attempt to evade a peace officer (Veh. Code, § 2800.2), felony vehicle theft (Veh. Code, § 10851, subd. (a)), and criminal trespass (Pen. Code, § 602, subd. (m)), appellant was sentenced to an aggregate four-year state prison term.

The sole issue on appeal is whether the trial court erroneously denied a defense motion to suppress evidence that was used to charge appellant with evading a peace officer. Specifically, appellant asserts that the trial court erred by relying on the “exigent circumstance” exception to the federal Constitution’s Fourth Amendment protection against unreasonable searches and seizures in denying his motion. Upon our review we conclude that the trial court did not err in denying the motion to suppress evidence. Accordingly, we affirm the judgment.

II.

PROCEDURAL BACKGROUND

On March 11, 2014, the San Mateo County District Attorney filed an information charging appellant with multiple offenses arising out of incidents that occurred on December 15, 2012, March 8, 2013, April 5, 2013, July 20, 2013, and early December 2013. This appeal pertains to the events of December 15, 2012, which resulted in the first three charges in the March 2014 information: attempting to evade a peace officer (Veh. Code § 2800.2); driving or taking a vehicle with intent to deprive its owner of title and possession (Veh. Code, § 10851, subd. (a)); and driving a vehicle on a highway in willful or wanton disregard of persons or property (Veh. Code, § 23103, subd. (a)). The information also alleged several sentencing enhancements including that appellant had suffered a prior serious felony conviction within the meaning of Penal Code section 667, subdivision (a), and that within the past five years appellant had served a prison term for another offense, within the meaning of Penal Code section 667.5, subdivision (b).

On July 11, 2014, appellant filed a motion to suppress evidence seized from his trailer on December 15, 2012. A hearing was held on July 25, 2014, at the conclusion of which the motion was denied. Thereafter, a negotiated plea was reached by which appellant pleaded no contest to felony evasion of a police officer on December 15, 2012, unlawfully taking or driving a Caltrans truck on March 8, 2013, and misdemeanor trespassing on April 5, 2013. Appellant also admitted the alleged prior strike conviction.

On October 8, 2014, appellant was sentenced to an aggregate term of four years in state prison. On November 12, 2014, appellant filed a notice of appeal, seeking review of the denial of his motion to suppress evidence. (See Pen. Code, § 1538.5, subd. (m).)¹

¹ The notice of appeal included a request for a certificate of probable cause to challenge the trial court's denial of a motion to sever charges for trial. That request was granted but appellant does not pursue this claim in his appeal.

III. DISCUSSION

Appellant’s challenge to the trial court order denying his motion to suppress evidence presents a mixed question of law and fact that is subject to a two-tier standard of review. “The standard of appellate review of a trial court’s ruling on a motion to suppress is well established. We defer to the trial court’s factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]” (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

A. Evidence Presented at Hearing on Motion to Suppress Evidence

At the July 25, 2014 suppression hearing, the prosecution called three witnesses, Joseph Fava, Steven Asnault, and Cristofer Serrano, all of whom were police officers employed by the Pacifica Police Department in December 2012. The testimony of these officers established the following pertinent facts about the events that transpired on the early morning of December 15, 2012.

At approximately 6:00 a.m., Officer Fava observed a motorcycle on Crespi Drive travelling at a high rate of speed. Fava made a U-turn and followed the motorcycle onto northbound Highway 1, pacing it at a speed of 70 miles per hour in a 45 miles-per-hour-speed limit zone. The officer activated his emergency lights and the motorcycle made an evasive move over the center median on Highway 1 and turned south. Fava made a U-turn and activated his siren in addition to his emergency lights. The motorcycle exited Highway 1 against a red light onto Crespi Drive and led the officer through several secondary roads until they reached the end of Corona Drive, which dead-ended onto an unpaved dirt road. The dirt road was blocked by a metal bar that functioned as a gate.

The motorcycle managed to get around the metal bar and went up the hill on the dirt road. Fava got out of his car, walked over to the bar, and saw uphill that the motorcycle had crashed. At that time of year and day, it still was dark out, but Fava could see the driver of the motorcycle standing next to the bike, although he could not see the driver’s face because he was wearing a helmet. The driver wore a black and white

checkered jacket, tan boots and black jeans or pants. When the driver turned and ran down the hill into an area filled with brush and trees, Fava started to follow on foot. However, when the man disappeared into the higher brush, the officer stopped because he was not familiar with the wooded area and he did not know if the man was armed or might attempt an ambush. Instead, Fava called for backup and remained on scene next to the downed motorcycle until additional police units arrived to help set up a perimeter and continue the search.

Corporal Asnault arrived about 10 minutes later and positioned himself in front of a wooden gate up the hill from the metal bar, approximately 20 to 25 feet away from the downed motorcycle. A car driven by appellant emerged from further up the hill and stopped at the gate. Appellant told Asnault that he was the “caretaker” for the property, that he had heard sirens and had come to see what was going on. Appellant’s clothing did not match the description Officer Fava had provided and there was no other reason to detain him, so Asnault let appellant go on his way.

Eventually other officers arrived, including Officer Serrano who was accompanied by his K-9 partner, Janyk. Due to the terrain and location, there were a number of places where a suspect could hide and lie in wait for police. Because of this risk, police used the trained dog to go out ahead of the officers so it could try to track a scent. Tracking with the K-9 began about 7:00 a.m., starting at the spot where the motorcycle went down. By then the sun was coming up. Janyk tracked some scattered clothes on the hill, which included a black and white jacket that Officer Fava recognized as belonging to the motorcycle driver. Janyk then tracked to and “alerted” on the door of a nearby trailer parked in a clearing, approximately 75 to 100 yards away from where the track began.

There were tire tracks from a motorcycle and a vehicle in the dirt near the trailer, which was not fenced off. The officers knocked on the trailer door and announced their presence, but no one responded. The team opened the door and let Janyk into the trailer first. Janyk alerted on an area near the sink, where officers found a pair of boots, pants and socks. The boots and pants appeared to be same ones worn by the motorcycle driver. Appellant was not there and was later arrested.

B. Denial of the Motion to Suppress

After the testimony was completed and counsel presented their arguments, the trial court made the following findings: When Officer Fava followed the motorcyclist off the freeway, he had probable cause to arrest the fleeing driver for felony evasion. The officer's hot pursuit continued to the unpaved dirt road where he made the reasonable decision to call for backup and set up a perimeter in light of officer and public safety concerns. These decisions were part of an "uninterrupted attempt to apprehend the fleeing suspect," which proceeded to a physical search of the wooded area once officers had the perimeter in place and the assistance of the K-9.

The court also found that "[a]lthough there was a pause in the pursuit, there was never an abandonment of the pursuit of the fleeing offender. And that pursuit led directly to the door" of the trailer. Entering that "private place" to apprehend the fleeing offender was lawful and reasonable because the alert from the K-9 gave the officers "probable cause to believe that the fleeing suspect was inside that private place, having fled from the public area where the crime was committed."

In light of these findings, the trial court denied the motion to suppress evidence recovered from the trailer.

C. Analysis

The Fourth Amendment to the United States Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," and generally precludes warrantless entry into a home. (U.S. Const., 4th Amend.; *People v. Henderson* (1990) 220 Cal.App.3d 1632, 1649 [explaining that "courts have guarded with particular zeal the right of individuals to carry on private activities within their homes without unreasonable governmental intrusion"].) "It is not surprising, therefore, that the Court has recognized, as 'a "basic principle of Fourth Amendment law[,]" that searches and seizures inside a home without a warrant are presumptively unreasonable.' . . ." (*Welsh v. Wisconsin* (1984) 466 U.S. 740, 748–749, quoting *Payton v. New York* (1980) 445 U.S. 573, 586.)

The presumption of unreasonableness may be overcome, however, by a showing of exigent circumstances. (*Minnesota v. Olson* (1990) 495 U.S. 91.) Exigent circumstances sufficient to justify a warrantless entry into a home exist when there is “an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence.” (*People v. Ramey* (1976) 16 Cal.3d 263, 276, italics added; see *Welsh v. Wisconsin*, *supra*, 466 U.S. at pp. 748–753.)

“[I]n appropriate circumstances the fresh pursuit of a fleeing felon may constitute a sufficiently grave emergency to justify an exception to the warrant requirement and make it constitutionally reasonable for the police to enter a private dwelling without prior authorization of a magistrate. [Citations.] ‘There is no ready litmus test for determining whether such circumstances exist, and in each case the claim of an extraordinary situation must be measured by the facts known to the officers.’ [Citation.]” (*People v. Escudero* (1979) 23 Cal.3d 800, 808–809 (*Escudero*)).

Appellant contends that fresh pursuit of a fleeing felon was not an exigent circumstance in this case because Officer Fava’s initial hot pursuit was interrupted “for a lengthy period of time” when appellant disappeared into the woods and nobody actually saw him enter the trailer. However, these facts are not conclusive. “[A]lthough ‘fresh pursuit’ of a fleeing felon must be substantially continuous and afford the law enforcement authorities no reasonable opportunity to obtain a warrant, it is not necessary that the suspect be kept physically in view at all times.” (*Escudero, supra*, 23 Cal.3d at p. 810.)

Furthermore, cases denying suppression motions based on exigent circumstances sometimes involve substantial time delays from the first notification of law enforcement until the warrantless search and seizure occurs. (See, e.g., *People v. Johnson* (1981) 30 Cal.3d 444 [entry into a residence without a warrant occurring 75 minutes after a shooting was reported to police comported with the exigent circumstances doctrine]; *People v. Gilbert* (1965) 63 Cal.2d 690, judgment vacated on other grounds in *Gilbert v. California* (1967) 388 U.S. 263 [warrantless entry of residence two hours after robbery

reported constituted fresh pursuit]; *People v. White* (1986) 183 Cal.App.3d 1199, 1204 [warrantless entry into rape suspect's home one and one-half hours after crime constituted "hot pursuit"].)

Escudero, supra, 23 Cal.3d 808 is instructive. In that case, the defendant was committing a residential burglary at approximately 12:40 a.m. when he was interrupted by the victim's houseguest. The defendant fled in his car but the witness chased him in his own car. When the defendant abandoned his car and took off on foot, the witness contacted police and provided them with information about the defendant and his car which led them to the defendant's home, where he was arrested at approximately 1:40 a.m. (*Id.* at pp. 804-806.) On these facts, our Supreme Court found that the warrantless entry of the burglary suspect's home an hour after the crime was committed was justified by the fact that officers "were in 'hot pursuit' of defendant throughout the events in question." (*Id.* at p. 808.) In concluding that the exigent circumstances exception to the warrant requirement applied, the *Escudero* court explained: "Throughout the events in question the police were pursuing a man whom they suspected of having broken into an occupied private home in the middle of the night to commit a burglary; this is a serious crime, with an ever-present potential for exploding into violent confrontation. The need to prevent the imminent escape of such an offender is clearly an exigent circumstance within the doctrine here invoked." (*Id.* at pp. 810-811, fn. omitted.)

Here, too, the facts established by the evidence support the conclusion that the officers were in hot pursuit of defendant throughout the events that culminated in the warrantless entry of the trailer. Officer Fava engaged appellant in a high speed chase along Highway 1 and adjacent secondary roads until appellant led the officer to an unpaved dirt road, where appellant crashed the motorcycle he was driving. In the dark, appellant dashed into high brush and disappeared. Not knowing if appellant was armed, Fava wisely did not follow but instead immediately called for backup, which arrived within 10 minutes, and arranged a perimeter to seal off the area. A short time later, a K-9 unit arrived to track appellant's whereabouts to enable the officers to continue their pursuit of the fleeing offender. The K-9 tracker led the officers to the trailer where the

dog alerted. The officers knocked and announced their presence, but got no response. Thinking that the motorcyclist was hiding inside, the door was opened and the dog led the officers into the trailer where they found in plain view clothing appellant had been wearing while on the motorcycle. The time from the beginning of the hot pursuit until entry into the trailer was approximately one hour long; from 6:00 a.m. until about 7:00 a.m. Given the time of day, the lack of sunlight for most of the hour, and the safety risk to the officers and the public these circumstances presented, it was reasonable for the officers to forego trying to contact a magistrate to obtain a search warrant for entry into the trailer.

Therefore, on these facts, which are supported by substantial evidence, we conclude that the trial court was correct in concluding that exigent circumstances existed justifying a warrantless entry into the trailer during law enforcement's ongoing pursuit of the motorcyclist for speeding and evading a police officer, in order to remove any physical threat he may have posed to the pursuing officers and the public.

Appellant relies primarily on *United States v. Johnson* (9th Cir. 2001) 256 F.3d 895 (*Johnson*).² In that case, officers conducted a warrantless search of defendant's property to look for a misdemeanor suspect who had evaded arrest in a neighboring area more than 30 minutes earlier. The *Johnson* majority found that search was not supported by probable cause or justified by the hot pursuit doctrine. (*Id.* at p. 905.) Here, appellant contends that this case is like *Johnson* because the officers had not seen him for more than 30 minutes when they searched his trailer. We are not persuaded by this analogy for several reasons.

First, the *Johnson* majority found that the officers' pursuit of their suspect was not continuous because once the suspect disappeared into the woods, officers never received any further information about him and indeed never found him. (*Johnson, supra*, 256 F.3d at pp. 908-909.) Thus, the court distinguished cases in which "the 'continuity' of

² We emphasize that while federal case authorities dealing with federal constitutional questions should be afforded great weight, they are not binding on this court. (*People v. Zapien* (1993) 4 Cal.4th 929, 989.)

the chase is delayed, but not broken” while officers await reinforcements for safety reasons. (*Id.* at p. 908.) Here, as discussed above, substantial evidence supports the trial court’s finding that the pursuit of appellant was continuous during the period that Officer Fava made arrangements for a perimeter and reinforcements, including the K-9 dog that tracked the fleeing felon to the trailer door.

Second, *Johnson* involved pursuit of a suspect believed to have been involved in misdemeanor misconduct, not a felony, a circumstance that court found important. (*Johnson, supra*, 256 F.3d at p. 908, fn. 6.) California authorities do not limit application of the exigent circumstances doctrine to instances only where felonious misconduct is suspected. (See *People v. Lloyd* (1989) 216 Cal.App.3d 1425, 1430; *In re Lavoyne M.* (1990) 221 Cal.App.3d 154, 159.) Even if the gravity of the offense was a pertinent consideration, here the conduct observed by Officer Fava was felonious (evasion of a police officer).

Third, the *Johnson* majority emphasized that the officer in that case had no more than a “gut feeling” or “hunch” that the fleeing misdemeanant was hiding on the property they entered and searched without a warrant. (*Johnson, supra*, 256 F.3d at pp. 905-906.) In contrast, here the trained K-9 tracker picked up appellant’s scent at the scene of the downed motorcycle and led the officers to the trailer where the dog alerted, indicating a high probability that the motorcycle driver was inside.

Finally, the *Johnson* majority found that another factor weighing against the exigency was that the appellant who owned the property subjected to the warrantless search did not create the allegedly exigent circumstances “and was completely unrelated to the suspect and his misdemeanors.” (*Johnson, supra*, 256 F.3d at p. 909.) Here, by contrast, appellant led Officer Fava on the high speed chase to the dirt road where he crashed his motorcycle and he was tracked from that spot directly to the door of his own trailer a short distance away.

IV.
DISPOSITION

The denial of appellant's motion to suppress is affirmed, as is the judgment.

RUVOLO, P. J.

We concur:

RIVERA, J.

STREETER, J.

A143570, *People v. Adams*