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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re J. S., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J. S.,

Defendant and Appellant.

A143740

(Alameda County
Super. Ct. No. SJ12018363)

J. S., a minor, appeals from a dispositional order following his admission to carrying a loaded firearm (Pen. Code, § 25850(a)).¹ He challenges the patdown search that led to discovery of the firearm. Because the police had probable cause to arrest the minor for a marijuana offense, the search was justified, and we affirm.

BACKGROUND

Oakland Police Officer Malcolm Miller responded to a report that a vehicle in front of a house on 32nd Street in Oakland was involved in narcotics activity. Officer Miller observed three people in a car matching the description reported. He approached the driver’s side door. When he tapped on the driver’s side window and asked the driver to roll it down, the driver instead opened the door. Officer Miller observed the driver’s

¹ All further statutory references are to the Penal Code unless otherwise indicated.

hands were trembling, smelled the odor of burnt marijuana, and saw three marijuana blunts—hand-rolled marijuana cigarettes—in the front ashtray. After backup units arrived, Officer Miller handcuffed the driver, removed him from the car, searched him, and placed him in a patrol car. He then removed the minor from the rear of the vehicle, handcuffed him, and searched him. The officer found an HMK .40-caliber semiautomatic firearm in the waistband of the minor’s pants.

A juvenile wardship petition, filed October 14, 2014, alleged the minor carried a concealed firearm in a vehicle in violation of section 25400, subdivision (a)(3), carried a loaded firearm within a vehicle in violation of section 25850, subdivision (a), and received stolen property in violation of section 496, subdivision (a).

The minor moved to suppress evidence of the gun. The court denied the motion. The minor then admitted to carrying a loaded firearm, and the other two charges were dismissed.

The sole issue on appeal is the legality of the search.²

DISCUSSION

Standard of Review

“ ‘ “When reviewing a ruling on an unsuccessful motion to exclude evidence, we defer to the trial court’s factual findings, upholding them if they are supported by substantial evidence, but we then independently review the court’s determination that the search did not violate the Fourth Amendment.” ’ [Citation] This means that we must measure the facts, as found by the trial court, against the constitutional standard of reasonableness for the search and/or seizure [citation] but we ‘decide for ourselves what

² The minor’s motion to augment the record with two photographs from the inside of the vehicle is denied because the photographs, although marked for identification and shown to the witness, were never offered into evidence, and thus were not “filed or lodged in the case in superior court.” (Cal. Rules of Court, rule 8.155(a)(1)(A); *People v. Schoop* (2012) 212 Cal.App.4th 457, 465, fn. 3 [materials not before the trial court not proper subject of motion to augment].)

legal principles are relevant, independently apply them to the historical facts, and determine as a matter of law whether there has been an unreasonable search and/or seizure' [citation]." (*People v. Hochstraser* (2009) 178 Cal.App.4th 883, 894.) This standard of review is "equally applicable to juvenile court proceedings." (*In re Lennies H.* (2005) 126 Cal.App.4th 1232, 1236.)

Officer Miller Had Probable Cause to Arrest and Search

Under the Fourth Amendment, people are " 'secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' " (*Maryland v. Pringle* (2003) 540 U.S. 366, 369 (*Pringle*)). A " 'custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification.' " (*Riley v. California* (2014) __ U.S. __ [134 S.Ct. 2473, 2483, 189 L.Ed.2d 430].)

" '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.' " (*People v. Thompson* (2006) 38 Cal.4th 811, 818.) "To determine whether an officer had probable cause to arrest an individual, we examine the events leading up to the arrest, and then decide 'whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to' probable cause [citation]." (*Pringle, supra*, 540 U.S. at p. 371.)

In *Pringle*, the United States Supreme Court found probable cause to arrest a car passenger for possession of cocaine based on an officer's discovery of \$763 in the glove compartment and five plastic baggies of cocaine by the back-seat armrest. (*Pringle, supra*, 540 U.S. at pp. 368, 374.) The passenger, one of three, was sitting in the front passenger seat, in front of the glove compartment containing the money. (*Id.* at p. 368.) It was, held the court, an "entirely reasonable inference from these facts that any or all three of the [vehicle] occupants had knowledge of, and exercised dominion and control over, the cocaine." (*Id.* at p. 372.) The court relied on its holding in *Wyoming v.*

Houghton (1999) 526 U.S. 295, where it ruled probable cause to search a vehicle extends to passengers' belongings in it, since a passenger "will often be engaged in a common enterprise with the driver." (*Id.* at p. 304.)

The facts in this case are similar to those in *Pringle*. The minor was in a car that smelled of burnt marijuana with three marijuana blunts in plain view. As in *Pringle*, it was entirely reasonable for Officer Miller to assume the minor or "any or all" of the car's occupants "had knowledge of, and exercised dominion and control over" the contraband marijuana. (*Pringle, supra*, 540 U.S. at p. 372.) Thus, there was probable cause to arrest and search the minor for possession of a controlled substance.

The minor contends the facts here differ greatly from those in *Pringle*, because he did not have practical access to the marijuana. To reach the marijuana, he argues he would have had to climb over the front seat or exit the rear door of the car and reenter through the front passenger door. While the defendant in *Pringle* was in the front passenger seat of the car and closer to the money found in the glove compartment, he was just as far away from the cocaine in the backseat as the minor was away from the marijuana in the front. Indeed, either the minor here or the defendant in *Pringle* could have easily leaned into the opposite portion of the car to take the contraband or accepted it if passed. In *Pringle*, the court ultimately held it was reasonable for the officer to assume "any *or all three* of the occupants had knowledge of, and exercised dominion and control over, the cocaine." (*Pringle, supra*, 540 U.S. at p. 372, italics added)

The minor also argues the officer lacked probable cause to arrest him for possession of marijuana because there was no evidence marijuana was burned while he was in the car, and because he was not acting suspiciously. But whether the marijuana was being presently burned or used is irrelevant to the charge of possession of marijuana. (Health & Saf. Code, § 11357.) That said, the odor was certainly a legitimate factor for the officer to consider in deciding whether he could arrest the minor for possession. While the minor points out several other factual differences in *Pringle*—such as that the

car in that case was in motion and not parked as was the case here, that the stop in *Pringle* was at 3:16 a.m. and the approach here was at 10:15 a.m., and that on questioning none of the occupants in *Pringle* offered information on ownership of the cocaine and here the officer asked no questions upon smelling the marijuana and seeing the blunts—none of these detracts from the salient aspects of *Pringle* and its import here.

The minor relies on *United States v. Soyland* (9th Cir. 1993) 3 F.3d 1312, 1314 (*Soyland*), for the proposition that the “mere presence” of a passenger in a vehicle does “not give rise to probable cause to arrest and search him.” In *Soyland*, an immigration agent stopped a vehicle at a checkpoint. The agent briefly smelled methamphetamine as the driver exited the car, and, upon questioning the driver about illegal drugs, the driver admitted her cigarette pack held two marijuana cigarettes. (*Ibid.*) The officer found money, another marijuana cigarette, and a pipe containing marijuana residue in the car, along with a chemical known for diluting narcotics. The officer then searched the passenger, Soyland, and found 220 grams of methamphetamine. (*Ibid.*)

The contraband here, however, the marijuana blunts, was not in the driver’s cigarette pack or hidden away in the vehicle as in *Soyland*. Nor had someone else, like the driver in *Soyland*, admitted to possession of contraband. The blunts were in plain sight and, given all the circumstances, the minor’s possession of the marijuana was just as probable as his car mates’.

Soyland also significantly predates the United States Supreme Court’s decision in *Pringle*. And even before *Pringle*, the Ninth Circuit had limited *Soyland* in *United States v. Buckner* (9th Cir. 1999) 179 F.3d 834. In *Buckner*, the circuit court emphasized that in *Soyland* the immigration agent searched the passenger despite admissions by the driver the contraband was hers. *Buckner* went on to hold that where it is equally likely a driver and passenger are involved in illegal activity, a search of both is justified. (*Buckner*, at pp. 838–839.) Even if the evidence in such a situation may be insufficient for a criminal conviction, said the court, “that does not mean that police lack probable cause to arrest a

passenger” and conduct a search. (*Id.* at p. 839.) In light of *Buckner* and *Pringle*, the minor’s reliance on *Soyland* is misplaced.

In sum, as there was probable cause to arrest the minor for possession of marijuana, the search that yielded the gun did not violate the Fourth Amendment.

DISPOSITION

The judgment is affirmed.

Banke, J.

We concur:

Humes, P. J.

Margulies, J.

A143740, *In re J.S.*