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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

**THE PEOPLE,**

**Plaintiff and Respondent,**

**A144425**

**v.**

**(San Francisco County  
Super. Ct. No. SCN223292)**

**ANTHONY KNIGHT,**

**Defendant and Appellant.**

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The San Francisco Police Department received a 911 call of a person with a gun at 51 Middle Point Road. Police officers went to that address in the Bayview District. From outside the residence, a police officer saw two people in the living room who seemed afraid. One person was kneeling; as he stood up, he made the sign of a cross over his torso. Remaining outside, the officer saw Anthony Knight sitting on a couch in the living room. He was emotionless. He had one hand on his hip, with his thumb above his belt, and the rest of his hand extending below his belt. The officer saw Knight push his right thumb down below his belt and toward his zipper, as though he were trying to conceal something. Police officers entered the residence, pat searched Knight, and found a Glock handgun.

The People charged Knight with several crimes, including possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1)).<sup>1</sup> The trial court denied Knight’s motion to suppress (§ 1538.5). Knight pled guilty to possession of a firearm by a felon (§ 29800, subd. (a)(1)) and admitted various prior convictions. The court suspended execution of sentence and placed Knight on probation.

Knight appeals. He contends the court erred by denying his motion to suppress because: (1) the prosecution failed to satisfy the *Harvey-Madden* rule;<sup>2</sup> (2) exigent circumstances did not justify the warrantless entry into his home; and (3) the officers pat searched him without reasonable suspicion. We disagree and affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

The People charged Knight with possession of a firearm by a felon (§ 29800, subd. (a)(1)) and two counts of resisting, obstructing, or delaying a peace officer in the performance of his duties (§ 148, subd. (a)(1)). The People also alleged sentencing enhancements.

Knight moved to suppress. He argued the police officers entered his home without a warrant and illegally searched him. According to Knight, the anonymous 911 call was unreliable and the officers entered his residence “without consent or exigent circumstances.” Knight also claimed the prosecution could not satisfy the *Harvey-Madden* rule with “[t]he dispatcher’s hearsay that the 911 caller saw a gun[.]” In opposition, the prosecution contended the police officers had reasonable suspicion to enter the residence, detain Knight, and pat search him. Additionally, the prosecution argued there was no *Harvey-Madden* violation because “circumstantial evidence” established “the source did, in fact, furnish the information[.]”

#### *Motion to Suppress Hearing*

In November 2014, San Francisco Police Officer Ali Misaghi was working in Bayview Station plainclothes unit, which focuses on gangs, firearms, and narcotics. On

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<sup>1</sup> Unless noted, all further statutory references are to the Penal Code.

<sup>2</sup> *People v. Harvey* (1958) 156 Cal.App.2d 516; *People v. Madden* (1970) 2 Cal.3d 1017.)

the evening of November 10, 2014, Officer Misaghi was in a police car in the Bayview District with three police officers: Sergeant Sean Griffin, and Officers Gabriel Alcaraz and Stephen Coleman. At 7:00 p.m., the officers received a call from dispatch of “a person with a firearm at 51 Middle Point.” The 911 caller “was whispering” and did not describe the person with the gun.<sup>3</sup>

Less than a minute later, the officers arrived at 51 Middle Point Road, located in a “violent” neighborhood “notorious” for the West Mob Gang. Officers from Bayview Station “diligently” patrol the area; every officer in the plainclothes unit has “arrested somebody with a firearm [ ] there.” The neighborhood consists of multiple rows of housing units similar to townhomes. Many units have a front and rear entrance, and are connected by paved “housing trails.” 51 Middle Point is on a slope between Wells and West Point Roads.

When the officers arrived at the approximate location of 51 Middle Point, Officers Misaghi and Coleman took one housing trail; Sergeant Griffin and Officer Alcaraz took another. It was dark, but Officer Misaghi could see a unit with “an open door with light coming out of it[.]” The lighting inside the residence “was pretty good.” Officer Misaghi “started walking towards the open door and looking inside[.]” From approximately 50 feet away, Officer Misaghi looked inside and saw two people, later identified as Romale Johnson and Frankie Coats, in the living room. Johnson was on his knees and Coats was standing. A “box or some sort of clutter” was past Coats. Johnson made “the sign of a cross with his hands and then stood up.”

Officer Misaghi illuminated the open doorway with his flashlight; then he and Officer Coleman approached the doorway. Officer Misaghi did not know the address,

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<sup>3</sup> When Officer Misaghi testified about the call he received from dispatch, Knight’s counsel objected on “hearsay [and] *Harvey-Madden* grounds.” The prosecution responded the testimony was not offered for its truth, but to explain “the officer’s subsequent actions[.]” The court overruled the objection and admitted the testimony “on that limited basis[.]” It made similar rulings throughout the hearing.

but as he “got closer” he could see the house number “on the door.”<sup>4</sup> Officer Misaghi approached the door because there was “a call of a person with a gun possibly inside the house, . . . and [he] could not see anything to the right . . . so [he] wanted to get a better vantage point.” Officer Misaghi “initially could see . . . Miss Coats and Mr. Johnson were looking east,” which made him think there was another person inside the living room he could not see.

Officer Misaghi arrived at the front door but remained outside. He saw Knight sitting on a couch across from Johnson and Coats, about six to eight feet from the front door. Knight was looking directly at Johnson and Coats. He had his right hand “laying on top of his right hip” with the palm of his hand on his belt and his fingers below his belt. Knight was “motionless.” Officer Misaghi also noticed Johnson and Coats’s “eyes were open” and they “appeared scared” and “nervous.” Knight, however, had “[n]o emotions” and “[n]o reaction.” Officer Misaghi thought this was unusual because most residents interact with the police and are “inquisitive about our presence.”

From outside the residence, Officer Coleman asked whether anyone had called the police. No one responded. When Officer Coleman asked for the head of the household, Coats said, ““She walked up the hill.”” Officer Coleman then asked whether anyone resided at 51 Middle Point and all three people responded, ““No.”” At this point, Officer Misaghi asked Coats and Johnson to leave the residence. He intended to enter the residence and perform a protective sweep because of “the violent nature of the call” and because “most of those units have an upstairs unit and [he] didn’t know if anybody else was inside the house that could attack” the officers.

Coats and Johnson “walked right out[,]” past Officers Misaghi and Coleman. Officer Misaghi saw Knight push his right thumb downward, toward his zipper and almost below his belt. Then Knight put both hands at his sides. Officer Misaghi thought the movement was “odd” and that Knight was “trying to hide something.” As Officer

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<sup>4</sup> On cross-examination, Officer Misaghi conceded he could not see the house number when the front door was open. He could, however, see the house number as he walked inside the residence.

Misaghi made this observation, Officer Coleman walked inside the residence.<sup>5</sup> Officer Misaghi followed him. Officer Coleman asked Knight to stand up, but Knight refused, saying, “No. This is my house.” Officer Misaghi walked up to Knight, grabbed his left hand, and ordered him to stand. Officer Coleman grabbed Knight’s right hand, and Knight stood.

Officer Misaghi pat searched Knight for weapons “based on all of the circumstances and [Knight’s] motion and the fear [expressed by Coats and Johnson] and the [911] call[.]” As he pat searched Knight, Officer Misaghi felt a metallic object where Knight had been resting his hand. Officer Misaghi “immediately” knew — from his experience with guns and from the shape and feel — the object was “a gun, in that exact area where [Knight’s] thumb and hand were . . . before he moved it.” Officer Alcaraz entered the residence and handcuffed Knight; Sergeant Griffin removed a Glock handgun from Knight’s right pant leg.

#### *Ruling, Plea, and Sentencing*

At the conclusion of the hearing, the court denied the motion to suppress. In a thorough and detailed ruling, the court first concluded the officers had “an objectively reasonable basis” for entering the residence to “render emergency assistance” because: (1) a whispering 911-caller reported a person with a gun at 51 Middle Point Road, a residence in a gang area with frequent gun possession; (2) Officer Misaghi looked through the open doorway at 51 Middle Point and saw two people who appeared to be scared, and one person make the sign of a cross; and (3) Officer Misaghi saw Knight with his right hand on top of his hip, with the palm of his hand on his belt and his fingers below his belt — and push something toward his zipper — which suggested Knight was

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<sup>5</sup> The trial court explicitly concluded, “before [the officers] entered the threshold [Officer Misaghi] could clearly see Mr. Knight with his right hand on his right hip and that he was pushing something at that time. [¶] So [this] . . . was observed by Officer Misaghi before they entered.” “[W]e consider the record in the light most favorable to the People since ‘all factual conflicts must be resolved in the manner most favorable to the [superior] court’s disposition on the [suppression] motion.’ [Citation.]” (*People v. Romeo* (2015) 240 Cal.App.4th 931, 941.)

concealing something. Next, the court determined the pat search was “appropriate” given the 911 call, Knight’s odd behavior, and his refusal to comply with Officer Coleman’s instructions. As the court explained, “[o]fficer safety was a concern because [Knight] was sitting on a couch. Officer Misaghi testified he was concerned there could be a weapon. . . . [¶] The testimony was completely consistent with an appropriate pat search for weapons. . . .”

Knight pled guilty to possession of a firearm by a felon (§ 29800, subd. (a)(1)) and admitted various prior convictions. The court suspended execution of sentence and placed Knight on probation.

## DISCUSSION

“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.” (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

### I.

#### *Knight’s Harvey-Madden Claim Fails*

Knight contends the court erroneously denied his suppression motion because the prosecution did not comply with the *Harvey-Madden* rule. The “*Harvey-Madden*” rule is a set of evidentiary rules “established to govern the manner in which the prosecution may prove the underlying grounds” for a detention or arrest “when the authority to arrest has been transmitted to the arresting officer through police channels.” (*People v. Collins* (1997) 59 Cal.App.4th 988, 993; *People v. Ramirez* (1997) 59 Cal.App.4th 1548, 1553.) As our high court recently explained, “[a]n officer may arrest or detain a suspect ‘based on information received through “official channels.”’ [Citations.] If a 911 call ‘has sufficient indicia of reliability . . . a dispatcher may alert other officers by radio, who may then rely on the report, [citation], even though they cannot vouch for it.’ [Citations.] However, upon proper objection [citation] “‘the People must prove that the source of the information is something other than the imagination of the officer who does not become a

witness.”” [Citations.] This requirement can be met by calling the police dispatcher as a witness at the suppression hearing or by introducing a recording of the 911 call. [Citations.]” (*People v. Brown* (2015) 61 Cal.4th 968, 983.)

Knight claims the prosecution failed to comply with the *Harvey-Madden* rule because it “produced no admissible evidence” the police “received a tip about a gun at 51 Middle Point[.]” According to Knight, the prosecution should have “produce[d] either the dispatcher or the recording” of the 911 call at the motion to suppress hearing. Doing so would have satisfied the *Harvey-Madden* rule, but the People were not *required* to call the police dispatcher as a witness, nor to introduce a recording of the 911 call to overcome a *Harvey-Madden* objection. The prosecution may rely on circumstantial evidence to demonstrate the police officers did not fabricate the dispatch or the information it contained. (*In re Richard G.* (2009) 173 Cal.App.4th 1252, 1258-1260 (*Richard G.*.)

Numerous cases support our conclusion. (*People v. Johnson* (1987) 189 Cal.App.3d 1315, 1320 (*Johnson*) [information from dispatch “corroborated by what the officers observed at the scene, making it virtually impossible for the information to have been made up in the police department”]; *In re Eskiel S.* (1993) 15 Cal.App.4th 1638, 1644 [sufficient corroboration can satisfy the *Harvey-Madden* rule]; *People v. Armstrong* (1991) 232 Cal.App.3d 228, 244-246 [proof the “information precipitating the arrest was not manufactured may be made by circumstantial evidence”]; *People v. Orozco* (1981) 114 Cal.App.3d 435, 444-445 [presence of cartridges outside a car supported “a very strong inference that the police did not make up” a dispatcher’s report of shots being fired from a vehicle].)

*Richard G.* is on point. In that case, the defendant raised a *Harvey-Madden* objection, contending the prosecution could not demonstrate “his detention was lawful unless it identified the source of the original report or called the police dispatcher to testify that it had been received.” (*Richard G., supra*, 173 Cal.App.4th at p. 1256.) The prosecution did not offer any such evidence, but the trial court allowed the arresting officers to testify about the dispatch and denied the defendant’s motion to suppress.

(*Ibid.*) The *Richard G.* court affirmed. It observed the prosecution may have “blundered by not producing in court the recipient of the original telephone report” but determined “there was no ‘manufacture’ of information. The information received by the police dispatcher was radioed to multiple officers in multiple patrol cars and it provided detailed descriptions of the two suspects. Absent [ ] the officer himself calling in the report to the dispatcher or, [ ] clairvoyance on the part of the dispatcher, there is no way that the dispatcher could have manufactured these detailed descriptions at or near the place and time the officers saw appellant and his companion matching the detailed descriptions. [¶] Where, as here, the evidence and the reasonable inferences flowing from it show that the police dispatcher actually received a telephone report creating a reasonable suspicion of criminal wrongdoing, it is not necessary to require strict compliance with the ‘*Harvey–Madden*’ rule.” (*Id.* at pp. 1259-1260.)

As in *Richard G.*, circumstantial evidence demonstrates the police officers did not “‘manufacture’” the information transmitted to dispatch. (*Richard G.*, *supra*, 173 Cal.App.4th at p. 1259.) Within one minute of receiving the call from dispatch, Officer Misaghi arrived at 51 Middle Point and saw two people inside the residence. While the dispatch did not contain a description of the appearance of a suspect, it did give the building number where the officers found two scared, submissive people whose appearance was consistent with being threatened with a firearm, in an area known for violence and gang activity. One of the occupants was kneeling; when he stood, he made “the sign of a cross with his hands[.]” Then Officer Misaghi saw Knight, who had his right hand “on his right hip” with the palm on his belt and his fingers below his belt. Knight was completely still, and had “[n]o emotions” and “[n]o reaction.” As Officer Coleman entered the residence, Officer Misaghi saw Knight push his right thumb downward, toward his zipper and almost below his belt, as though he was “trying to hide something.”

These corroborated details serve the purpose of the *Harvey-Madden* rule: they are persuasive evidence the reported tip was genuine and not a fabrication of a “‘phantom informer’” by a law enforcement official. (*People v. Poehner* (1971) 16 Cal.App.3d 481,

487; see also *Johnson, supra*, 189 Cal.App.3d at p. 1320.) Absent “clairvoyance,” there is no way the dispatcher could have ““manufacture[d]” the information that person with a gun was at 51 Middle Point. (*Richard G., supra*, 173 Cal.App.4th at p. 1259.) We reject Knight’s claim of *Harvey-Madden* error.

## II.

### *The Officers Lawfully Entered Knight’s Residence*

Knight contends exigent circumstances did not justify the warrantless entry into his residence. “The Fourth Amendment . . . guarantees against unreasonable searches and seizures by law enforcement. . . . Because a warrantless entry into a home to conduct a search and seizure is presumptively unreasonable under the Fourth Amendment [citation] the government bears the burden of establishing that exigent circumstances or another exception to the warrant requirement justified the entry. [Citation.]” (*People v. Rogers* (2009) 46 Cal.4th 1136, 1156 (*Rogers*)). “[T]he exigent circumstances doctrine constitutes an exception to the warrant requirement when an emergency situation requires swift action to prevent imminent danger to life. [Citation.] ““The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency. . . .” [Citations.]’ [Citation.] . . . . ““[T]here 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.] Generally, a court will find a warrantless entry justified if the facts available to the officer at the moment of the entry would cause a person of reasonable caution to believe that the action taken was appropriate. [Citation.]” (*Id.* at pp. 1156-1157, fn. omitted.)

According to Knight, there were no exigent circumstances because the 911 call was unreliable. Knight’s focus on the purported unreliability of the anonymous tip is misplaced. A “tip may itself create a reasonable suspicion sufficient to justify a . . . detention, especially if the circumstances are deemed exigent by reason of . . . threats to public safety.” (*People v. Wells* (2006) 38 Cal.4th 1078, 1083; *Navarette v. California* (2014) \_\_\_ U.S. \_\_\_ [134 S.Ct. 1683, 1688, 1690] (*Navarette*)). But here, we do not

consider the tip in isolation: we consider “the totality of the circumstances — the whole picture[.]” (*Navarette, supra*, at p. 1687, quoting *United States v. Cortez* (1981) 449 U.S. 411, 417 (*Cortez*)). And here, the “whole picture” demonstrates the officers had an objectively reasonable basis for believing there was an emergency at 51 Middle Point. (*Navarette, supra*, at p. 1687, quoting *Cortez, supra*, at p. 417.)

As we have explained, a whispering 911 caller reported a person with a firearm at 51 Middle Point.<sup>6</sup> Officer Misaghi testified 51 Middle Point is in a “violent” neighborhood “notorious” for the West Mob Gang, where officers from Bayview Station have made arrests for firearm possession. When Officer Misaghi arrived less than a minute after receiving the call from dispatch, he saw Johnson and Coats inside a residence. They looked scared. Johnson was kneeling; when he stood up, he made the sign of a cross. As Officer Misaghi approached the residence — which he learned was 51 Middle Point — he saw Knight sitting motionless on a couch, with his hand on his belt and his palm facing down. Knight did not react when he saw the officers, which Officer Misaghi considered unusual. Before entering the residence, Officer Misaghi also saw Knight push his right thumb downward, toward his zipper and almost below his belt, as though Knight was “trying to hide something.” Together, this evidence suggested Knight was the person with the gun at 51 Middle Point, and amply demonstrates the officers entered the residence to “protect or preserve life or avoid serious injury[.]” (*Rogers, supra*, 46 Cal.4th at p. 1156; *People v. Gemmill* (2008) 162 Cal.App.4th 958, 970 (*Gemmill*)). We reject Knight’s claim that the circumstances did not provide an objectively reasonable basis for entering his home to render emergency assistance. (*Michigan v. Fisher* (2009) 558 U.S. 45, 48 “[o]fficers do not need ironclad proof of ‘a likely serious, life-threatening’ injury to invoke the emergency aid exception”].)

Nor are we persuaded by Knight’s claim that “the exigency was over” when Johnson and Coats left the house. To be sure, “a search or seizure based on exigent circumstances ends when the emergency passes[.]” (*People v. Duncan* (1986) 42 Cal.3d

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<sup>6</sup> Knight concedes the whispering caller “arguably raised suspicion . . . someone was threatened with injury . . .”

91, 99) but there is no indication the emergency here had passed. Johnson and Coats were outside, but Knight remained on the couch, emotionless. He had pushed his thumb downward, toward his zipper, in an attempt to “hide something.” His behavior was “odd” and “unusual” and he was in an area known for violence and gun possession. Under the circumstances, the removal of Coats and Johnson from the residence “did not dissolve the exigency[.]” (*Gemmill, supra*, 162 Cal.App.4th at p. 971.)

### III.

#### *The Pat Search Was Lawful*

Knight’s final argument is the officers did not have reasonable suspicion to pat search him. Knight was detained when the officers ordered him to stand and pat searched him. (*In re Frank V.* (1991) 233 Cal.App.3d 1232, 1240, fn. 3.) To justify a detention, “the circumstances known or apparent to the officer must include specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to . . . detain is involved in that activity.” [Citation.]” (*People v. Turner* (2013) 219 Cal.App.4th 151, 160, fn. omitted.) Pursuant to a lawful detention, an officer may pat search the detainee for weapons with reasonable suspicion the person is “armed and dangerous[.]” (*Id.* at p. 160, citing *Terry v. Ohio* (1968) 392 U.S. 1, 27 (*Terry*)). “The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” (*Terry, supra*, at p. 27.)

Here, the evidence overwhelmingly demonstrates the officers had reasonable suspicion to detain and pat search Knight. The officers received a report that a person with a gun was at 51 Middle Point, in a violent area known for gang activity and gun possession. Two people were inside 51 Middle Point. They appeared scared, and one made a sign of the cross. Knight exhibited “odd” and concerning behavior: (1) he was emotionless when he saw the officers; (2) he moved his hand near his belt, as though he was concealing something; and (3) he denied living in the house, but then refused to stand up when the officers ordered him to do so, claiming ““this is my house.””

This evidence amply supports the pat search. “The minimal intrusion of a patdown under these circumstances is a reasonable response to the potential danger if these ‘necessary measures [are not taken] to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.’” (*People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1230.) Here, the officers had reasonable suspicion Knight was armed and dangerous.

#### DISPOSITION

The judgment is affirmed.

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Jones, P.J.

We concur:

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Simons, J.

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Needham, J.

A144425