

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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

B240565

(Los Angeles County
Super. Ct. No. FJ49091)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Robert J. Totten, Juvenile Court Referee. Affirmed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Victoria B. Wilson and Kim Aarons, Deputy Attorneys General, for Plaintiff and Respondent.

Jose C. appeals from an order declaring him a ward of the juvenile court for resisting, obstructing or delaying a peace officer and unlawfully possessing marijuana. He contends the evidence against him should have been suppressed because it was discovered as a result of an unlawful detention. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On June 22, 2011 the district attorney filed a petition pursuant to Welfare and Institutions Code section 602 alleging Jose, then 15 years old, had resisted, obstructed or delayed a peace officer in violation of Penal Code section 148, subdivision (a)(1), a misdemeanor, and had unlawfully possessed 28 grams or less of marijuana in violation of Health and Safety Code section 11357, subdivision (b), an infraction.

Jose moved to suppress the marijuana and a marijuana pipe recovered following his arrest by Los Angeles County Sheriff's Deputy Julio Martinez, contending there was no lawful basis for his detention. (Welf. & Inst. Code, § 700.1.) The juvenile court held an evidentiary hearing on the suppression motion in conjunction with the jurisdiction hearing.

According to Deputy Martinez, the People's only witness, on the afternoon of April 22, 2011 he was driving a marked patrol car in East Los Angeles as part of a gang unit. Deputies Jason Howell and A. Baez¹ were inside the car with Martinez. The three officers were wearing jackets bearing a sheriff's star on the front and a sheriff's logo on the back.

Deputy Martinez noticed Jose standing alone on the sidewalk outside a house on North Eastman Avenue. No one else was near Jose. From a distance of five to eight yards from Jose, Martinez detected a strong odor of burnt marijuana through the open car windows. Martinez drove past the house, made a U-turn and returned, intending to detain Jose to determine if he was unlawfully in possession of marijuana.

¹ Although the reporter's transcript indicates the deputy's surname is Baez, material in the clerk's transcript, including reports submitted by the deputy himself, spell his name Paez.

Deputy Martinez pulled up to the house, got out of the car and told Jose to come over to the patrol car. Jose replied, "What the fuck do you want," before opening the gate and entering the front yard of the house. Martinez and Deputy Howell followed Jose into the yard and ordered him to show his hands. Jose failed to comply and demanded the deputies leave, saying they had no right to be there without a search warrant. Jose then yelled for his mother to get her camera. Jose turned away from the deputies and walked toward the house, while placing his left hand into his pants pocket. Concerned Jose might be arming himself, Martinez grasped Jose's hand from behind and ordered him to place both hands behind his back. Jose turned to face Martinez, causing the deputy to lose his grip on Jose's hand. Jose advanced on Martinez with a clenched fist, and the deputy grabbed Jose's chest and pinned him against a wall of the house. Jose ignored the deputies' repeated commands to stop thrashing around and to place his hands behind his back. Martinez applied additional pressure to Jose's chest, and Jose stopped struggling although he continued to yell at the deputies. Howell handcuffed Jose and searched him, finding a small plastic bag containing marijuana and a marijuana pipe inside one of his pockets.

Laura Castro Mendoza, Jose's neighbor, was the only defense witness on the suppression motion. Mendoza testified she saw Jose in the front yard across the street when she was retrieving some things from her car. Jose was leaning over the fence with his right hand out, in a horizontal position facing upward. A patrol car drove up and double parked next to Mendoza's car. Two deputies emerged from the car and entered Jose's front yard. Mendoza saw the deputies push Jose up against a wall, bend him over and place his hands behind his back. Mendoza asked the deputies what they were doing to Jose, and they told her to leave. Mendoza was not familiar with the odor of marijuana and did not remember smelling anything unusual in the air.

After hearing the evidence and argument of counsel, the court denied Jose's motion to suppress, finding the deputies had reasonable suspicion to detain Jose. At the jurisdiction hearing, after hearing testimony from Jose's mother and sister in his defense,

the juvenile court found the allegations true and sustained the petition. The court subsequently ordered Jose into suitable placement. Jose does not challenge the sufficiency of the evidence to support the jurisdiction findings.

DISCUSSION

1. Standard of Review

In reviewing the ruling on a motion to suppress, the appellate court defers to the trial court's factual findings, express or implied, when supported by substantial evidence. (*People v. Ayala* (2000) 23 Cal.4th 225, 255; *People v. James* (1977) 19 Cal.3d 99, 107.) The power to judge credibility, weigh evidence and draw factual inferences is vested in the trial court. (*James*, at p. 107.) However, in determining whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. (*People v. Zamudio* (2008) 43 Cal.4th 327, 342.)²

2. The Law Governing Detentions

Police contacts with individuals fall into “three broad categories ranging from the least to the most intrusive: consensual encounters that result in no restraint of liberty whatsoever; detentions, which are seizures of an individual that are strictly limited in duration, scope, and purpose; and formal arrests or comparable restraints on an individual's liberty.” (*In re Manuel G.* (1997) 16 Cal.4th 805, 821.)

A detention occurs within the meaning of the Fourth Amendment when the officer, by means of physical force or show of authority, in some manner temporarily restrains the individual's liberty. (*Brendlin v. California* (2007) 551 U.S. 249, 254 [127 S.Ct. 2400, 168 L.Ed.2d 132]; *People v. Zamudio, supra*, 43 Cal.4th at p. 341.) Although a police officer may approach an individual in a public place and ask questions if the person is willing to listen, the officer may detain the person only if the officer has a reasonable, articulable suspicion the detainee has been, currently is or is about to be

² Whether relevant evidence obtained by assertedly unlawful means must be excluded is determined exclusively by deciding whether its suppression is mandated by the federal Constitution. (Cal. Const., art. I, § 28, subd. (f)(2); *People v. Lenart* (2004) 32 Cal.4th 1107, 1118.)

engaged in criminal activity. (*Terry v. Ohio* (1968) 392 U.S. 1, 21 [88 S. Ct. 1868, 20 L.Ed.2d 889]; see *In re Tony C.* (1978) 21 Cal.3d 888, 893.) To satisfy this requirement, the police officer must “point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.” (*People v. Souza* (1994) 9 Cal.4th 224, 231; *United States v. Sokolow* (1989) 490 U.S. 1, 7 [109 S.Ct. 1581, 104 L.Ed. 2d 1] [“the police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause”].) In evaluating whether that standard has been satisfied, we examine the “totality of the circumstances” in each case to determine whether a “particularized and objective basis” supports the detention. (*United States v. Cortez* (1981) 449 U.S. 411, 417 [101 S.Ct. 690, 66 L.Ed.2d 621].)

3. *Deputy Martinez Had Reasonable Suspicion To Detain Jose*

Before engaging in any show of authority consonant with a detention, Deputy Martinez had detected the odor of burnt marijuana a short distance from Jose, who was standing alone on the sidewalk. That alone gave rise to a reasonable suspicion Jose unlawfully possessed marijuana. (See *People v. Collier* (2008) 166 Cal.App.4th 1374, 1377-1378; cf. *People v. Palaschak* (1995) 9 Cal.4th 1236, 1241-1242 [“[L]oss or destruction of evidence *by ingestion* should not defeat a possession charge. [Citations.] [¶] [W]e see no reason why a drug possession charge could not be based on direct or circumstantial evidence of past possession.”].) Martinez was justified in detaining Jose at that point to investigate the source of the marijuana, to confirm or dispel his suspicion that Jose was involved in this illegal activity. (See *People v. Souza, supra*, 9 Cal.4th at p. 233 [possibility of innocent explanation does not deprive officer of capacity to entertain reasonable suspicion of criminal conduct].) Accordingly, accepting that Deputy Martinez’s order to Jose to approach the patrol car would have conveyed to a reasonable person that he or she was not free to refuse or otherwise to terminate the encounter, the order was appropriate.

As discussed, Jose reacted to the order with verbal abuse and walked away from the deputies. When they followed him into his yard, Jose continued his defiant behavior, insisting the deputies leave, ignoring their repeated orders to show his hands and again walking away from them.³ Jose's belligerence and obvious attempts to discourage the deputies from contacting him, while perhaps not as inherently suspicious as headlong flight, certainly suggested consciousness of guilt in these circumstances, an additional factor properly considered in determining whether there was reasonable cause to detain him. (See *People v. Souza*, *supra*, 9 Cal.4th at p. 234 [manner in which a person avoids police contact may properly be considered in assessing reasonable cause for a detention of that person].)

The nature of the encounter changed in a constitutionally significant manner when Deputy Martinez grabbed Jose's hand to prevent him from arming himself, and Jose broke free and charged Martinez with a clenched fist. Jose's resistance, which continued until Martinez pinned him against a wall, provided probable cause to arrest for resisting, obstructing or delaying a peace officer. The subsequent search of Jose's person, which Martinez characterized as a pat search, was proper as a search incident to a valid arrest. (See *United States v. Robinson* (1973) 414 U.S. 218, 225-226 [94 S.Ct. 467, 38 L.Ed.2d 427].)⁴ The suppression motion was properly denied.

³ Jose does not contend on appeal the deputies violated his Fourth Amendment right to be free of unreasonable seizures when they entered his front yard to detain him. (See *People v. Chavez* (2008) 161 Cal.App.4th 1493, 1500 [“[i]t is clear that police with legitimate business may enter areas of the curtilage which are impliedly open, such as access routes to the house”].)

⁴ Jose asserts in his opening brief that the search was unlawful, but only as the fruit of a purportedly unlawful detention. He does not argue an independent ground for the supposed illegality of the search.

DISPOSITION

The order is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.