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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

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THE PEOPLE,

Plaintiff and Respondent,

v.

HARDEV SINGH et al.,

Defendants and Appellants.

C069417

(Super. Ct. No. CRF100631)

A deputy sheriff responding to a 911 call of a physical fight stopped a car matching the description given by radio dispatch. As a result of evidence gathered during the stop and a search of the car, defendants Hardev Singh and Kuljeet Singh were charged with several felonies, including attempted murder and arson.

The trial court denied defendants' motion to suppress the evidence. Hardev Singh subsequently pled no contest to arson of an inhabited structure, vandalism in excess of \$400, and two

counts of unlawful sexual intercourse with a minor<sup>1</sup> and was sentenced to three years in prison. Kuljeet Singh pled no contest to assault with a firearm, arson of an inhabited dwelling, vandalism in excess of \$400, and two counts of unlawful sexual intercourse with a minor and received a four-year prison sentence.

On appeal, defendants contend the trial court erred in denying their suppression motion because sufficient reasonable suspicion to detain the car did not exist with either the dispatch call or the deputy himself. We disagree and affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

Testimony during the suppression hearing showed that a 911 call reporting a physical fight came to the Sutter County Sheriff's Department at approximately 3:30 a.m. on March 16, 2010. Dispatcher Carrie Zembiec took the call and typed the information into her computer. The caller said the fight happened at a market on Bogue Road, and four male East-Indian suspects in their 20's were leaving in a black four-door Ford westbound on Bogue Road.

Dispatcher Mary Manuel testified she sat near Zembiec and heard Zembiec's side of the conversation, became aware of "a 415<sup>[2]</sup> in progress" and read what Zembiec was typing. At one

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<sup>1</sup> The sex crimes to which defendants pled no contest were from separate cases not tied to the evidence at issue here.

<sup>2</sup> Penal Code section 415, subdivision (1) provides that any person who "unlawfully fights in a public place" shall be

point, Manuel personally listened to the call for about three seconds and heard the caller say he was not hurt in response to a question by Zembiec.

The caller spoke in "broken" English. Manuel sensed his native language was Punjabi, but understood all she heard him say. Following standard practice, Manuel took handwritten notes during the call and reviewed them along with Zembiec's computer notes before dispatching to the field.

Sutter County Deputy Sheriff Howard Hunt received the dispatch. He testified that the dispatch "advised the aggressors were four East-Indian males who were leaving the scene in a black Ford four-door car." The car was last seen leaving the store and driving west on Bogue Road.

Deputy Hunt drove to the area of the market and, after learning via dispatch the store clerk was not injured, headed west on Bogue Road, then north on Walton Avenue looking for the car. At the intersection of Walton and Lincoln Road, he saw a car matching the description driving west on Lincoln. Four persons were inside, one wearing a yellow turban. It was approximately 3:30 a.m. The roads in the area were otherwise deserted.

Deputy Hunt stopped the car. He saw the person in the backseat behind the front passenger seat lean forward "as if he was reaching underneath the seat in front of him." One of the

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punished by up to 90 days in county jail, a fine of up to \$400, or both.

occupants, defendant Hardev Singh, told the deputy he owned the car and consented to a search. Among other items, the deputy found a .357 Colt revolver in a pocket on the back of the front passenger seat.

The trial court denied the suppression motion, finding reasonable suspicion existed for making the stop and consent to search the car was "proper and freely given." Defendants timely appealed.

#### DISCUSSION

Defendants contend the trial court erred in denying the suppression motion. Their argument has two aspects, both of which lack merit. Contrary to defendants' assertion that the "*Harvey-Madden*"<sup>3</sup> rule was not satisfied, the prosecution provided sufficient testimony at the suppression hearing to show the dispatch call had the required basis for reasonable suspicion to detain the car. Additionally, the deputy himself had sufficient reasonable suspicion to justify stopping the car to investigate the reported fight.

"In reviewing the denial of a motion to suppress evidence, we view the record in the light most favorable to the trial court's ruling and defer to its findings of historical fact, whether express or implied, if they are supported by substantial evidence. We then decide for ourselves what legal principles are relevant, independently apply them to the historical facts,

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

and determine as a matter of law whether there has been an unreasonable search and/or seizure." (*People v. Miranda* (1993) 17 Cal.App.4th 917, 922.)

I

*The Harvey-Madden Objection*

Defendants argue "[t]he people failed to meet the *Harvey/Madden* rule by providing sufficient evidentiary foundation for the information conveyed by the anonymous caller to establish reasonable suspicion for Officer Hunt to stop the vehicle." Defendants fail, however, to offer a clear explanation of the *Harvey-Madden* rule and thus do not provide a persuasive application of it in this case.

It is well settled under California law that an officer may make an arrest "based on information and probable cause furnished by other officers." (*People v. Ramirez* (1997) 59 Cal.App.4th 1548, 1553, and cases cited therein.) "These cases, however, require that when the first officer passes off information through 'official channels' that leads to arrest, the officer must also show [the] basis for his probable cause. In other words, the so-called 'Harvey-Madden' rule requires the basis for the first officer's probable cause must be 'something other than the imagination of an officer who does not become a witness.'" (*Ibid.*)

The same evidentiary showing is required when an officer makes an investigatory stop or detention based on information from official police channels. (*Restani v. Superior Court* (1970) 13 Cal.App.3d 189, 196.) In such instances, the

originating or transmitting officer must possess "facts amounting to circumstances short of probable cause which would have justified him to personally make the detention." (*Ibid.*; see also *People v. Lazanis* (1989) 209 Cal.App.3d 49, 59.)

Here, defendants' sole argument based on the *Harvey-Madden* rule is "[t]he only information that Ms. Manuel personally heard was that the caller was not injured" and therefore the descriptions of the incident's location, the suspects, the car and direction of travel "were not sufficiently established." This misconstrues the dispatcher's testimony. It is true she personally listened to the 911 call for just three seconds, but that is not all she heard while doing her job that night. She and Zembiec, the other dispatcher, sat together and worked as a team to relay information quickly to deputies in the field. Manuel heard Zembiec's side of the call, and read the notes Zembiec entered into the computer. Manuel also took handwritten notes about what she was hearing in those moments. To ensure accuracy, she reviewed the handwritten and computer notes before her dispatch.

Defendants claim "[t]he People were required to call Ms. Zembiec, or the clerk, or play a tape of the call." Common sense says otherwise. The evidence showed an emergency call came in. A fight was "in progress." Fighting is a crime. (Pen. Code, § 415.) The 911 caller described the incident and its location, the suspects, the car, and the car's location and direction of travel. Manuel heard and read the contents of the call as conveyed by her partner, and dispatched the same. Where

"the evidence and the reasonable inferences flowing from it show that the police dispatcher actually received a telephone report creating reasonable suspicion of criminal wrongdoing, it is not necessary to require strict compliance with the 'Harvey-Madden' rule." (*In re Richard G.* (2009) 173 Cal.App.4th 1252, 1259, citing *People v. Orozco* (1981) 114 Cal.App.3d 435, 444.)

The *Harvey-Madden* requirement may be satisfied with circumstantial evidence providing a strong inference officers did not manufacture the information. (*People v. Orozco, supra*, 114 Cal.App.3d at pp. 444-445.) In *Orozco*, an anonymous call to police about people shooting out of a car was not proved with dispatcher testimony or other evidence, but evidence of spent cartridges found on the ground near the car in question supported "a very strong inference that the police did not make up the information from the informant" and circumstantially proved the veracity of the dispatch to police. (*Ibid.*)

Here, at roughly the same time the radioed dispatch went out, the deputy spotted a lone car in the area that matched the description given in the dispatch: A black, four-door Ford, with four people inside, one wearing a yellow turban. This supports the strong inference the information about the reported fight was not manufactured within the Sutter County Sheriff's Department. Thus, the *Harvey-Madden* rule was satisfied here.

## II

### *Reasonable Suspicion*

Defendants contend even if the *Harvey-Madden* rule was satisfied, Deputy Hunt had insufficient reasonable suspicion to

stop the car because the 911 call was anonymous and did not involve a situation "'grave and immediate'" enough to warrant an investigative stop. Defendants also contend the call's information about the fight and suspects was too vague to warrant investigation. We disagree.

"To justify an investigative stop or detention, the circumstances known or apparent to the officer must include specific and articulable facts which, viewed objectively, would cause a reasonable officer to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person the officer intends to stop or detain is involved in that activity." (*People v. Conway* (1994) 25 Cal.App.4th 385, 388, citing *In re Tony C.* (1978) 21 Cal.3d 888, 893; see *People v. Souza* (1994) 9 Cal.4th 224, 230.) "The guiding principle in determining the propriety of an investigatory detention is 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.' [Citations.] In making our determination, we examine 'the totality of the circumstances' in each case. [Citations.]" (*People v. Wells* (2006) 38 Cal.4th 1078, 1083.)

"Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability." (*Alabama v. White* (1990) 496 U.S. 325, 330 [110 L.Ed.2d 301, 309].) However, "[p]rivate citizens who are witnesses to a criminal act, absent some circumstances casting doubt upon their information, are considered reliable."

(*People v. Brueckner* (1990) 223 Cal.App.3d 1500, 1504, citing *People v. Ramey* (1976) 16 Cal.3d 263, 269.) "Neither a previous demonstration of reliability nor subsequent corroboration is ordinarily necessary when witnesses to or victims of criminal activities report their observations in detail to the authorities." (*Brueckner*, at p. 1504.)

A

*The 911 Caller's Identity And Information*

Defendants contend the 911 caller was anonymous and therefore the information conveyed was not reliable enough to provide sufficient reasonable suspicion to stop the car. In support, defendants cite *Florida v. J. L.* (2000) 529 U.S. 266 [146 L.Ed.2d 254], which involved an "unknown, unaccountable informant." (*Id.* at p. 271 [146 L.Ed.2d at p. 260].) There, the informant reported a young African-American male in a plaid shirt standing at a certain bus stop was carrying a gun. (*Id.* at p. 268 [146 L.Ed.2d at pp. 258-259].) Based solely on the tip, officers stopped and frisked the young man and seized a gun from his pocket. (*Ibid.* [146 L.Ed.2d at p. 259].) The Supreme Court held the detention and search unconstitutional. (*Id.* at p. 269 [146 L.Ed.2d at p. 259].) A tip received under such circumstances is "insufficient to justify a brief detention and patdown search, absent some independent corroboration of the reliability of the tip and [the] tipster's assertion of illegal conduct." (*People v. Wells, supra*, 38 Cal.4th at p. 1084, citing *Florida v. J. L., supra*, 529 U.S. at pp. 272-274 [146 L.Ed.2d at pp. 261-262].)

We first disagree with defendants' automatic assumption that the 911 call was anonymous in the classic sense of having been made by an unknown, unaccountable informant who deliberately hid his identity. Here, the call came directly to the 911 system at 3:30 a.m. as a live situation involving a physical fight "in progress," not as a vague tip about possible criminal activity. The dispatcher asked the caller if he was hurt, suggesting the reasonable inference the caller was present at the scene as a victim or witness. Deputy Hunt in his testimony referred to the caller as the "clerk," suggesting he either had firsthand knowledge or made a reasonable inference given the hour and store location.

The testimony did not show whether the caller gave his name. Nor do we have evidence the caller sought to hide his identity. Defendants by their own admission highlight this point by noting the caller "expressed no hesitation about identifying himself" and the dispatchers "easily could have asked the caller for his name" or "easily" could have called him back for more information. If they had made such a follow-up call, the caller's distinctive Punjabi accent could have helped establish his identity as the original caller. In the same vein, the language difficulties noted by the dispatcher also could explain why, in the rush of the emergency call, the caller's identity took a backseat to the more urgent details needed to send out deputies or rescue personnel.

In any event, under the totality of the circumstances test, even the information provided by an unidentified caller may be

"suitably corroborated" such that it shows "'sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop.'" (*Florida v. J. L.*, *supra*, 529 U.S. at p. 270 [146 L.Ed.2d at p. 260], citing *Alabama v. White*, *supra*, 496 U.S. at p. 327 [110 L.Ed.2d at p. 306].) In *Florida v. J. L.*, the anonymous tip contained no basis for how the caller knew about the information being conveyed, nor predictive information that could be corroborated. (*Florida v. J. L.*, *supra*, 529 U.S. at p. 270-71 [146 L.Ed.2d at p. 306].) Here, on the other hand, the 911 caller showed a basis for the information conveyed. He told the dispatcher about a "physical fight between subjects" at a specific location and reported the "[s]uspects were leaving." He further described the car, the suspects, their location and direction of travel. The deputy's stop of the black Ford a few moments later corroborated these details.

Defendants cite *People v. Saldana* (2002) 101 Cal.App.4th 170 to support their contention Deputy Hunt did not have the requisite reasonable suspicion for a detention. *Saldana*, however, does not help defendants. There, the detention of the defendant was held illegal because deputies relied on an anonymous phone tip that gave no basis for its reliability and the deputies failed to corroborate the tip with any observations or information available to them personally. (*Id.* at pp. 172, 175.) According to the *Saldana* court, an outstanding warrant discovered by the deputies for a person other than the defendant was not sufficient corroboration for the tip. (*Id.* at p. 175.) Here, in contrast, the 911 call not only demonstrated a basis

for the information conveyed, but Deputy Hunt corroborated firsthand the details from the caller.

Defendants also contend "there was no information that any of the four males who drove from the gas station had violated the law, were violating the law or would be violating the law." This misstates the facts. The 911 call described a physical fight, which is a crime under California law, and reported the suspects leaving. Defendants cite our Supreme Court's decision in *People v. Dolly* (2007) 40 Cal.4th 458 for the proposition that an anonymous tip must involve "'a grave and immediate risk not only to the caller but also to anyone nearby'" to create sufficient reasonable suspicion for a vehicle stop or detention. Defendants misapply this single factor from *Dolly* and ignore other equally relevant factors identified in that case.

*Dolly* involved an unidentified 911 caller reporting a man had pulled a gun and threatened him. (*People v. Dolly, supra*, 40 Cal.4th at p. 462.) In its totality analysis, the court in *Dolly* held the call provided reasonable suspicion for detaining the suspect for four reasons: (1) the grave and immediate risk posed by a suspect who pointed a gun and threatened someone and who was still mobile and at large in a car (*id.* at pp. 465-466); (2) the type of call--911--which is inherently more reliable by virtue of being recorded and verifiable and because such calls "'concern contemporaneous emergency events, not general criminal behavior'" (*id.* at p. 467); (3) the caller's firsthand, contemporaneous descriptions of the crime and perpetrator that were corroborated within minutes by police (*id.* at p. 468); and

(4) the caller's plausible explanation for not wanting to give his name, namely the fear of retaliation (*id.* at p. 469).

Here, a report of a late-night physical fight with fleeing mobile suspects reasonably could be viewed as a public safety risk worthy of police response. Like *Dolly*, this call also came through the 911 system, with its inherently higher level of reliability, from a caller who provided a firsthand contemporaneous description of the crime and suspects. We address the fourth consideration in *Dolly*, anonymity, by noting the lack of a name in the testimony here does not necessarily render the Sutter County 911 caller *per se* unreliable. Accordingly, the deputy had sufficient reasonable suspicion to stop the car under this set of circumstances.

#### B

##### *Sufficiency Of Detail*

Defendants argue Deputy Hunt did not have reasonable suspicion for the stop because the details from the caller were too vague. "[W]as the fight," defendants ask, "a slap, a push, a kick to the leg, or something less or more serious?" Defendants further argue the reported fight had ended and therefore did not require law enforcement response.

Neither more detail nor an ongoing fight were required for a lawful detention. The 911 call reporting a physical fight, fleeing suspects and details about their car and direction of travel was sufficient. Under case law, it was not only reasonable, but imperative the department respond and investigate. "[A] reasonable suspicion of involvement in

criminal activity will justify a temporary stop or detention. Under that standard, if the circumstances are 'consistent with criminal activity,' they permit--even demand--an investigation: the public rightfully expects a police officer to inquire into such circumstances 'in the proper discharge of the officer's duties.'" (*In re Tony C.*, *supra*, 21 Cal.3d at p. 894, citing *People v. Flores* (1974) 12 Cal.3d 85, 91.)

Defendants, conversely, also argue the caller gave more information than was substantiated by the deputy. The deputy, they argue, did not testify to observing a complete path of travel for the black Ford between the point it was reported heading west on Bogue Road to the point where he spotted it. Likewise, defendants contend "perhaps most importantly" the deputy did not see four "males" described by the caller in the car when he came upon it.

Deputy Hunt testified he came upon a car matching the caller's description with four "subjects," one wearing a turban. First, we note the obvious: The use of the word "subjects" does not exclude their being male. The deputy simply may have fallen into the parlance of his profession. Even if he did not know their gender, did he need to ascertain all four occupants were male before stopping the car? And did he need to see every turn they made before he detained them? No. "[A]n officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.'" (*In re H.M.* (2008) 167 Cal.App.4th 136, 142, citing *Illinois v. Wardlow*

(2000) 528 U.S. 119, 123 [145 L.Ed.2d 570, 576].) Here, the deputy's corroboration of nearly all the call's details within moments of the dispatch provided the "sufficient indicia of reliability" required under *Florida v. J. L.* for reasonable suspicion to make an investigative stop. (*Florida v. J. L.*, *supra*, 529 U.S. at p. 270 [146 L.Ed.2d at p. 306].)

DISPOSITION

The judgment is affirmed.

\_\_\_\_\_ ROBIE \_\_\_\_\_, Acting P. J.

We concur:

\_\_\_\_\_ BUTZ \_\_\_\_\_, J.

\_\_\_\_\_ HOCH \_\_\_\_\_, J.