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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSHUA AVINA,

Defendant and Appellant.

E053295

(Super.Ct.No. RIF10004996)

OPINION

APPEAL from the Superior Court of Riverside County. Gordon Burkhart,*
Richard Todd Fields, and Mark E. Johnson, Judges.† Affirmed.

Theresa Osterman Stevenson, under appointment by the Court of Appeal, for
Defendant and Appellant.

* Retired judge of the Riverside Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

† Judge Burkhart denied the motion to suppress; Judge Fields denied the motion to dismiss; and Judge Johnson was the trial judge.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, James D. Dutton, and Sabrina Y. Lane-Erwin, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

Defendant Joshua Avina was the intoxicated driver in a fatal hit-and-run accident. A jury convicted defendant of gross vehicular manslaughter (Pen. Code, § 191.5, subd. (a)) and other criminal offenses. The court sentenced him to a total prison term of 11 years.

On appeal, defendant urges the trial court committed reversible error in denying his motion to suppress evidence (Pen. Code, § 1538.5) seized from him and his residence and not dismissing the information for insufficient evidence. (Pen. Code, § 995.) We conclude the motions were properly denied based on exigent circumstances demonstrating the need for emergency assistance.

II

FACTUAL AND PROCEDURAL BACKGROUND

On the evening of June 12, 2010, the victim, David Dupont was struck by a car and killed. That night Dupont and his wife had left a party at 8:30 or 9:00 p.m. They visited a Taco Bell close to their home and had a disagreement, causing Dupont to start walking home about one-half mile. Although there was no witness to the accident as it occurred, a teenage boy testified that, about 9:30 p.m., he was outside his house on Redlands Avenue with his dad, fixing a motorcycle, when he heard a loud screech. He

noticed a brown Honda, struggling to accelerate past his house on Redlands Avenue. An image or shadow, later identified as Dupont's body, was sprawled across the vehicle's hood. The body slipped off the vehicle and rolled under the car. The Honda turned left on Placentia Avenue. The cause of Dupont's death was multiple blunt force traumatic injuries.

*A. The Suppression Hearing*¹

Brian Pentel, a deputy sheriff for the County of Riverside, testified that he was on duty the evening of June 12, 2010. He received a radio broadcast of a hit-and-run accident at the intersection of Redlands Avenue and Water Avenue in the City of Perris. Nearby, at Lakeview Drive and Placentia Avenue, Pentel located an unoccupied gray Honda vehicle matching the description given by the dispatcher. The Honda had major damage to the front end, a broken windshield, and a dented roof. The vehicle was covered in blood. An ID card bearing the name David Dupont was on the floorboard on the driver's side. Pentel reported the Honda's license plate number and described the damage to the dispatcher.

Deputy sheriff Ismael Gomez received the dispatcher's broadcast about the fatal accident and the description of the damage to the Honda. The registered owner of the Honda was Irma Dominguez. Gomez went to her address at 181 Superior Court in Perris. Gomez contacted Dominguez who denied she had given permission to anyone to drive

¹ Because the facts developed at trial were not before the court on the motion to suppress, we do not summarize them.

her car and who seemed unaware her vehicle was missing. Initially, Gomez believed the car may have been stolen. However, a small girl, about two years of age, was standing on the stairs and pointed at a bathroom door, saying, “Daddy, boo boo” while pointing at her own head.

Gomez had significant experience responding to automobile collisions and knowledge about injuries sustained, including internal bleeding and concussions. On this occasion, Gomez was concerned for the health and safety of the person in the bathroom. Gomez entered the house because of exigent circumstances, the possibility of a serious or severe injury, suggested by the child’s comment and the reported damage to the car.

Gomez went upstairs and heard a shower running. Gomez knocked on the door and a man responded he was using the toilet. Gomez opened the door and saw defendant exit the shower and sit on the toilet. There was blood washing off defendant in the shower and blood on the floor. A woman was in the bathroom, drying defendant with a towel. Bloody clothing was piled in the corner. There were bloody shoes with glass in them. Defendant smelled strongly of alcohol and his eyes were watery and bloodshot. Gomez believed defendant was intoxicated. Defendant dressed in fresh clothes and Gomez asked him if “he knew why I was here.” Defendant responded, “Yeah, because I hit that guy.”

While defendant was dressing, another person approached Gomez and complained he “might have some glass in his eye from the crash.” Gomez handcuffed defendant and detained him in the patrol car because he believed defendant was the driver in the hit-and-run accident.

B. The Trial Court's Rulings

In denying the suppression motion, the trial court commented that the officer came to the Dominguez residence armed with the information that there was significant damage to the Honda and its windshield, suggesting there could be serious injury and causing the officer to be “hyperalert to circumstances” he might find in the household. The child’s statement caused him to believe someone might be injured. Therefore, the exigent circumstances exception applied, justifying a warrantless search.

In denying defendant’s subsequent motion to dismiss the information, the trial court elaborated that the police commonly respond to 911 calls from children reporting an emergency. The deputy’s response was reasonable given the exigent circumstances, “mean[ing] an emergency situation requiring swift action to prevent imminent danger to life . . . or to forestall the imminent . . . destruction of evidence.” At the time Gomez came to the residence, the deputy knew that there had been a fatal accident and the Honda had major damage. The deputy did not enter the house immediately, even after speaking to Dominguez. Instead, he waited until the child made her spontaneous comment. At that point, the deputy, as a first responder, was justified by the totality of the circumstances in believing someone may have been hurt and needed aid.

III

DISCUSSION

A. 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.” (*People v. Panah* (2005) 35 Cal.4th 395, 465) 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 (*People v. Leyba* (1981) 29 Cal.3d 591, 596-597) but we ‘decide for ourselves what 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’ (*People v. Miranda* (1993) 17 Cal.App.4th 917, 922). We will affirm the trial court’s ruling if correct on any theory of applicable law. (*People v. Zapien* (1993) 4 Cal.4th 929, 976.)

“California law requires that the reasonableness of searches and seizures undertaken by the police be reviewed under federal constitutional standards. ([*People v. Rogers* (2009) 46 Cal.4th 1136,] 1156, fn. 8.)” (*People v. Hochstraser* (2009) 178 Cal.App.4th 883, 894; *People v. Camacho* (2000) 23 Cal.4th 824, 830.)

Defendant argues that substantial evidence does not support the trial court’s finding that exigent circumstances existed to search defendant and his residence. As we explain below, the entry and search of the house were objectively justified by exigent circumstances.

B. Exigent Circumstances

“The Fourth Amendment to the federal Constitution guarantees against unreasonable searches and seizures by law enforcement and other government officials.[] 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.” (*People v. Rogers, supra*, 46 Cal.4th at p. 1156.)

“ “[W]arrants are generally required to search a person’s home or his person unless “the exigencies of the situation” make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.”

(*Brigham City, Utah v. Stuart* (2006) 547 U.S. 398, 403.) One such exigency is presented by “ “[t]he need to protect or preserve life or avoid serious injury. . . .”

[Citations.] Accordingly, law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.” (*Ibid.*) Moreover, “[a]n action is ‘reasonable’ under the Fourth Amendment, regardless of the individual officer’s state of mind, ‘as long as the circumstances, viewed *objectively*, justify [the] action.’ [Citation.] The officer’s subjective motivation is irrelevant.” (*Id.* at p. 404; *People v. Troyer* (2011) 51 Cal.4th 599, 613; *People v. Ray* (1999) 21 Cal.4th 464, 470-471.)

Our Supreme Court is in accord. “[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.] . . . In this regard, “ “[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.” (*People v. Rogers,*

supra, 46 Cal.4th at pp. 1156-1157.) In *Rogers*, the court held that exigent circumstances justified entry and search of storage rooms controlled by the defendant to look for the murder victim (the mother of the defendant’s child), based on a missing person report made by the victim’s mother.

“[T]here is no bright-line rule for determining whether exigent circumstances exist; rather, courts must approach each claim of an extraordinary situation by looking at the totality of the particular circumstances known to the searching officer. . . . ¶] Because the totality of the circumstances must be considered, the fact that other circumstances were not present . . . does not defeat the finding of an emergency . . . the relevant inquiry remains whether, in light of all of the circumstances, there was an objectively urgent need to justify a warrantless entry.” (*People v. Rogers, supra*, 46 Cal.4th at pp. 1160-1161.) When circumstances are known to an investigating officer which strongly suggest that someone is injured, a reasonably cautious person could believe that immediate and swift action was appropriate. (*Id.* at p. 1157; *People v. Ray, supra*, 21 Cal.4th at pp. 472-473; *People v. Ormonde* (2006) 143 Cal.App.4th 282, 292.)²

Here, as fully articulated twice by the trial court, the objective circumstances indicated a person might be injured at the Dominguez residence. To summarize again, Deputy Gomez, an officer experienced in car accidents, knew there had been a fatal hit-and-run, causing significant damage to the Honda, particularly to the front end,

² On appeal, defendant also argues the warrantless entry was justified to prevent the imminent destruction of evidence. This argument was not advanced below. Furthermore, Deputy Gomez did not testify that he believed destruction of evidence was about to occur. (*People v. Gentry* (1992) 7 Cal.App.4th 1255, 1262.)

windshield, and driver's side. When he arrived at the house, Dominguez, the car's owner, apparently did not know where her car was or what had happened to it. Nevertheless, a small child announced without prompting that her father had hurt his head and indicated that he was behind a closed door. The other circumstances lent support to the deputy's interpretation of the child's statements. (*People v. Seminoff* (2008) 159 Cal.App.4th 518, 529.) Based on the totality of the foregoing circumstances, the deputy had plausible and objective reasons to be concerned about a person's health and safety.

Defendant lists a number of factors which he asserts militate against a finding of exigent circumstances: Gomez's lack of more specific knowledge about the details of the hit-and-run-accident; the absence of traces of blood on the driveway or at the residence; the seeming lack of distress by the occupants; the fact that no one had called 911 or asked for help; the ambiguity of the child's statement; and Gomez's testimony that he had a "hunch" or a "gut feeling."

Notwithstanding the latter, we are not persuaded that any of these factors outweighed the factors favoring swift and immediate action to determine whether a person was in need of emergency aid. The totality of the circumstances must be considered, and the fact that certain circumstances were not present does not defeat the finding of an emergency. The cases compel the conclusion that the totality of the circumstances here justified the entry into defendant's residence to ascertain whether someone was injured inside. Exigent circumstances justified a warrantless police entry into and search of defendant's residence and of his person.

IV

DISPOSITION

Exigent circumstances objectively demonstrated the need for emergency assistance. We affirm the judgment.

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CODRINGTON
J.

We concur:

HOLLENHORST
Acting P.J.

KING
J.