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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DESHAWN LEE KING,

Defendant and Appellant.

F061398

(Super. Ct. No. BF130742A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. John S. Somers, Judge.

John K. Cotter, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and William K. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Gomes, Acting P.J., Kane, J., and Franson, J.

STATEMENT OF THE CASE

On February 18, 2010, appellant, Deshawn Lee King, was charged in an information with possession of cocaine base for sale, a felony (Health & Saf. Code, § 11351.5). The information also alleged two prior serious felony convictions within the meaning of the three strikes law (Pen. Code, §§ 667, subds. (c)-(j), 1170.12, subds. (a)-(e))¹ and two prior prison term enhancements (§ 667.5, subd. (b)). On April 12, 2010, the court heard and denied appellant's suppression motion.

On October 8, 2010, the prosecutor filed an amended information alleging a criminal street gang enhancement (§ 186.22, subd. (b)(1)). Appellant waived his constitutional rights and admitted all of the allegations in the amended information, including the gang enhancement, in return for a stipulated prison term of 14 years. On November 10, 2010, the court sentenced appellant to prison for 14 years. Appellant contends that the trial court erred in denying his suppression motion.

FACTS

On January 24, 2010, at about 1:50 p.m., Bakersfield Police Officers Beagley and Juarez were on patrol around the 300 block of Monterey Street in Bakersfield, in a patrol car. The area was known to the officers for its high incidence of narcotics activity, primarily by the Blood gang. Beagley testified he had made numerous arrests at that location for possession of drugs for sale.

Beagley saw appellant standing next to another man in front of an apartment at 325 Monterey Street. Beagley testified that as they parked in front of 325 Monterey Street, he made eye contact with appellant and appellant began to run away. He also testified he did not see appellant with a firearm, drop anything, place anything into his pocket, or hand anything to the man standing next to him before he fled.

¹ Unless otherwise designated, all statutory references are to the Penal Code.

Juarez testified that he exited the patrol car and told appellant, “stop, police.” Appellant did not stop and kept running away. Juarez gave chase, following appellant into an apartment at 325 Monterey Street.² When asked why he decided to chase appellant, Juarez stated that “[h]e matched the description provided by another officer as possibly possessing drugs.”

Juarez pursued appellant to a bathroom in the apartment. Although appellant attempted to shut the bathroom door, Juarez struggled with appellant and gained entry into the bathroom. Juarez detained and searched appellant. During the search, Juarez found a plastic baggy containing marijuana, a cell phone, and identification.

Juarez read appellant his *Miranda*³ rights. Appellant waived his rights and told Juarez that he ran away because he possessed cocaine. During a later search at the jail, another officer found narcotics hidden in appellant’s anus.

The trial court found there was sufficient evidence that appellant had a reasonable expectation of privacy in the apartment he ran into and therefore had standing to challenge the search and seizure. The court also found there was a sufficient basis for Juarez to detain appellant after appellant was told to stop but continued to flee. The court further found that appellant’s continued flight after being told to stop by Juarez created probable cause to arrest appellant, outside of the apartment, for resisting, delaying or obstructing a peace officer in violation of section 148. Citing *People v. Spain* (1984) 154 Cal.App.3d 845 and *Mann v. Mack* (1984) 155 Cal.App.3d 666 (*Mann*), the court concluded that an otherwise lawful arrest could not be thwarted by a suspect retreating into a house.

² Appellant’s God-sister testified that appellant lived in the apartment that he ran into at 325 Monterey Street while being chased by Juarez. Appellant’s parole officer testified that his records showed that appellant resided in the same apartment.

³ *Miranda v. Arizona* (1966) 384 U.S. 436.

DISCUSSION

Appellant argues there was no lawful basis for the officers to detain him or enter his residence without a warrant, and the trial court therefore erred in denying his suppression motion. We disagree with appellant's characterization of the detention and search, and affirm the judgment.

In ruling on a motion to suppress, the trial court finds the historical facts, selects the law, and applies it to determine if the law, as applied, has been violated. We review the trial court's resolution of the factual inquiry under the deferential standard of substantial evidence. The ruling by the trial court is a mixed question of law and fact subject to independent review. On appeal, we do not consider the correctness of the court's reasons for its decision, only the correctness of the ruling itself. (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 145 (*Letner*).)

A detention is reasonable under the Fourth Amendment when the detaining officer can 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 (*Souza*).) The appellate court reviews the objective reasonableness of the facts known to the officer, not the officer's legal opinion about those facts. (*People v. Limon* (1993) 17 Cal.App.4th 524, 539.) The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. The principal function of the officer's investigation is to resolve that very ambiguity and establish whether the activity is legal or illegal. (*In re H.M.* (2008) 167 Cal.App.4th 136, 145.)

Even where an officer lacks probable cause to arrest a suspect, the officer may temporarily detain a suspect when the officer reasonably believes a crime has occurred or criminal activity is afoot. The detention can last no longer than necessary to effectuate the purpose of the stop. The stopping, handcuffing, and detention of a suspect for a few

minutes can constitute a legal investigative detention. (*People v. Celis* (2004) 33 Cal.4th 667, 674.)

The Fourth Amendment permits an officer to “conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot” and that the person detained is engaged in that activity. (*Illinois v. Wardlow* (2000) 528 U.S. 119, 123 (*Wardlow*); *Souza, supra*, 9 Cal.4th at p. 230.) Courts look to the totality of circumstances of each case in determining whether the “detaining officers [had] a particularized and objective basis for suspecting [the detainee] of criminal activity. [Citations.]” (*Souza, supra*, 9 Cal.4th at p. 230; *Brown v. Texas* (1979) 443 U.S. 47, 52; *United States v. Arvizu* (2002) 534 U.S. 266, 273.) This approach allows officers to draw on their own training and experience in deciding whether criminal activity is afoot. (*United States v. Arvizu, supra*, at p. 273.) We defer to the trial court’s factual findings, express or implied, where supported by substantial evidence. (*People v. Garry* (2007) 156 Cal.App.4th 1100, 1106.)

In *Wardlow*, the high court recognized that “nervous, evasive behavior is a pertinent factor in determining reasonable suspicion. [Citations.]” (*Wardlow, supra*, 528 U.S. at p. 124.) California courts have recognized that such behavior, in conjunction with other factors, can form an officer’s reasonable suspicion that criminal activity is afoot. (*Letner, supra*, 50 Cal.4th at pp. 146-147 [avoiding contact with police under suspicious circumstances suggestive of guilt]; generally see *People v. McGaughran* (1979) 25 Cal.3d 577, 590 [furtive gestures].)

In *Souza*, our Supreme Court found that when an officer is patrolling a high crime neighborhood late at night and two people near a parked car act evasively when the officer directs his patrol car spotlight toward them, the officer is justified in conducting a brief, investigatory detention to find out whether activity being engaged in is criminal or legal. (*Souza, supra*, 9 Cal.4th at pp. 240-242.)

The major premise of appellant's challenge to the denial of his suppression motion is the claim that he could not have been detained or arrested prior to being followed into the residence. He argues the search could not be justified as a search incident to lawful arrest for violating section 148 because the officers did not initially have probable cause to detain or to arrest him. (See *Garcia v. Superior Court* (2009) 177 Cal.App.4th 803, 818-819 [obstructing, delaying or resisting a peace officer in violation of section 148 requires that the officer was acting lawfully at the time the offense against him was committed].)

Flight from the police is a proper consideration and can constitute a key factor in determining whether the police have sufficient cause to detain. (*Souza, supra*, 9 Cal.4th at p. 235.) In *Wardlow*, a police officer was driving the last car in a four-car police caravan converging on an area known for heavy narcotics trafficking. (*Wardlow, supra*, 528 U.S. at p. 121.) The officer observed the suspect, Wardlow, "standing next to the building holding an opaque bag." (*Id.* at pp. 121-122.) Wardlow "looked in the direction of the officers and fled." (*Id.* at p. 122.) The officer stopped Wardlow and conducted a patdown frisk which revealed that Wardlow was carrying a loaded handgun. (*Ibid.*)

In upholding the search, the Supreme Court noted that an individual's presence in an area of expected criminal activity, by itself, is not enough to support a reasonable, particularized suspicion that the person is committing a crime. The fact that a stop occurs in a high-crime area, however, is among the relevant considerations in determining the reasonableness of a detention. (*Wardlow, supra*, 528 U.S. at p. 124.) The high court noted that Wardlow's "unprovoked flight" when he saw the police, along with Wardlow's "nervous, evasive behavior" were pertinent factors in determining reasonable suspicion. (*Ibid.*) *Wardlow* found that "Headlong flight—wherever it occurs—is the consummate act of evasion; it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." (*Ibid.*) Based on the suspect's presence in a high-crime

area, coupled with his flight from police, the majority in *Wardlow* concluded the officer was justified in suspecting Wardlow was involved in criminal activity and in continuing his investigation. (*Id.* at p. 125.)

Here, appellant was present in a high-crime neighborhood known for gang activity and narcotics sales. Appellant also matched the description given to Juarez by another officer as someone possibly in possession of drugs. Under these circumstances, appellant's headlong flight, as soon as he saw the officers park their patrol car, would give a reasonable officer suspicion that criminal activity was afoot and would justify Juarez's attempt to detain appellant to investigate. Juarez identified himself as a police officer and ordered appellant to stop. Instead of stopping, appellant continued to flee.

Examining the totality of the circumstances and applying our independent judgment, we conclude the officers were faced with an ambiguous situation which provided the "minimal level of objective justification" (*Wardlow, supra*, 528 U.S. at p. 123) necessary to allow the police to initially detain appellant.⁴ Appellant could refuse

⁴ In his brief and during oral argument, appellate counsel argued that this case is not like *Wardlow* because that defendant was carrying a bag, appellant was not, and appellant "simply left upon the arrival of these officers in front of him." Appellate counsel also argued that appellant was simply free to not talk to the officers and to leave. These arguments ignore the fact that once appellant began his unprovoked flight, even after he had been asked to stop, appellant was in violation of section 148. Although the officers could not see appellant carrying anything suspicious, his headlong flight as soon as he saw them park their patrol car was not a situation where appellant was casually leaving the scene or peacefully refusing to cooperate with officers after a brief encounter.

During oral argument, appellate counsel also argued that we cannot view the officers' subjective intent. We can, however, examine the objective facts known to the officers at the time of the encounter with appellant. As in *Wardlow*, there was more than mere flight because appellant was in a high crime neighborhood and matched the description from a fellow officer as someone who was in possible possession of narcotics. We find these are objective facts that would validate appellant's initial detention prior to his flight.

to cooperate with the officers, but he could not run from them. (See *People v. Allen* (1980) 109 Cal.App.3d 981, 986-987.) Once appellant continued his headlong flight after being told to stop by the officer, the officers had probable cause to arrest him for violating section 148. As a defendant has no right to resist a lawful detention, reasonable cause to detain becomes probable cause to arrest when the suspect refuses to comply with the officer's demands to stop. (*People v. Lloyd* (1989) 216 Cal.App.3d 1425, 1429-1430 (*Lloyd*.)

We next address whether Officer Juarez could cross the threshold of the residence appellant ran into without a search warrant. In appropriate circumstances, the fresh pursuit of a fleeing felon may constitute a sufficiently grave emergency to justify an exception to the warrant requirement, making it constitutionally reasonable for police to enter a private dwelling without the prior authorization of a magistrate.⁵ (*People v. Escudero* (1979) 23 Cal.3d 800, 808 (*Escudero*.) The issue here is whether the fresh pursuit of a fleeing person who has committed a misdemeanor in the officer's presence may also justify an exception to the warrant requirement to permit entry into a private dwelling pursuant to exigent circumstances. There is no litmus test for determining whether such circumstances exist. In each case, the claim of an extraordinary situation must be measured by the facts known to the officers. (*Id.* at p. 809; *People v. Ramey* (1976) 16 Cal.3d 263, 276.)

In *People v. Thompson* (2006) 38 Cal.4th 811 (*Thompson*), the California Supreme Court examined the issue of whether police could follow a misdemeanor drunk driving suspect into his home without a search warrant. The *Thompson* court held, inter alia, that drunk driving was a serious misdemeanor and that officers could pursue a suspect into his

⁵ Fresh pursuit of a fleeing felon must be substantially continuous and afford the officers no reasonable opportunity to obtain a warrant. It is not necessary that the suspect be kept physically in view at all times. (*Escudero, supra*, 23 Cal.3d 800, 810.)

home to effectuate an arrest without first obtaining a search warrant. (*Id.* at p. 827.) Key in the *Thompson* court's reasoning was its observation that a majority of California's sister jurisdictions recognized a distinction between jailable and nonjailable offenses in determining the seriousness of a misdemeanor crime. (*Id.* at pp. 822-823.)

In *In re Lavoyne M.* (1990) 221 Cal.App.3d 154, 157 (*Lavoyne M.*), the court upheld a warrantless entry into the minor's aunt's home, where the minor sometimes resided, based on hot pursuit. The incident began when police attempted to pull over the car the minor was driving for traffic violations. The car stopped in front of the minor's aunt's house and the minor fled inside. The officers, one of whom recognized the minor and knew he was too young to be licensed to drive, followed the minor into the house and arrested him. Officers subsequently found narcotics in the minor's room. (*Ibid.*)

The *Lavoyne M.* court rejected the contention that the minor nature of the offenses did not justify the warrantless entry. Although the traffic violations were only infractions, driving without a license was a misdemeanor, and failing to yield to police was a jailable offense. (*Lavoyne M., supra*, 221 Cal.App.3d at p. 158.) Furthermore, *Lavoyne M.* held that hot pursuit of the minor into his residence under these circumstances to prevent him from frustrating an arrest that began in a public place provided an exception to the warrant requirement and that the exigency of hot pursuit applied to justify a warrantless entry into a residence to effectuate an arrest. (*Id.* at p.159.)

Lloyd, supra, 216 Cal.App.3d 1425, is similarly instructive. There, the court upheld a warrantless entry into a home to issue a traffic citation after the driver walked quickly away from the police and entered his home. As the police attempted to follow the driver inside the house, the defendant, the driver's brother, blocked the police from entering, demanding they obtain a warrant. The defendant tried to push the officers back out the door. He was arrested for interfering with an officer. (*Id.* at p. 1427.) On appeal,

the defendant argued that since the warrantless entry was illegal, his acts trying to prevent the entry were not illegal. (*Id.* at p. 1428.)

The *Lloyd* court concluded the warrantless entry was justified. The driver had fled from the police when they tried to issue him a traffic citation, giving the officer probable cause to arrest him under section 148. *Lloyd* found that under these circumstances, the officer's hot pursuit into the house to prevent the suspect from frustrating the arrest, which had been set in motion in a public place, constituted a proper exception to the warrant requirement. (*Lloyd, supra*, 216 Cal.App.3d at p. 1429.) *Lloyd* recognized that one type of exigent circumstance exists where an arrest or detention begins in a public place and the suspect retreats into a private place to thwart arrest. (*Id.* at pp. 1428-1429, citing *United States v. Santana* (1976) 427 U.S. 38, 42-43.)

The *Lloyd* court rejected the contention that the minor nature of the traffic offense precluded a finding of exigent circumstances. Where pursuit into a home was based on an arrest set in motion in a public place, the fact that the offenses justifying the initial detention or arrest were misdemeanors was of no significance in determining the validity of the entry without a warrant. *Lloyd* held that the police were acting lawfully in seeking warrantless entry into defendant's home to complete their detention of the driver and the defendant was not justified in interfering with their actions. (*Lloyd, supra*, 216 Cal.App.3d at p. 1430.)

On the question of whether Juarez could cross the threshold of the residence to pursue appellant, the trial court relied in its ruling, in part, on *Mann*. In *Mann*, Officer Hoefel went to the Mann residence to investigate a disturbing the peace complaint caused by unreasonably loud music coming from the Mann garage. (*Mann, supra*, 155 Cal.App.3d at pp. 670-671.) After initially encountering Darien Mann at an exterior fence gate outside the garage, Hoefel informed him that he and his band were disturbing the peace. Mann admitted he had been playing loud music. Hoefel asked Mann to gather

the other band members and to meet him on the front porch. Although the other band members did so, Mann remained inside his home. Hoefel entered the home, saw Mann inside a bedroom through an open door, and told Mann he was under arrest and to come outside. Mann then complied with Hoefel. (*Id.* at p. 671.)

The *Mann* court found that after Mann admitted that he had been playing loud music, Hoefel had probable cause to arrest Mann for violating the municipal ordinance and for disturbing the peace (§ 415) because the disturbance had occurred in the officer's presence. (*Mann, supra*, 155 Cal.App.3d at p. 674.) After Hoefel ordered Mann and the other band members to come out to the front of the house, and Mann failed to comply, Hoefel acted reasonably in concluding that Mann was attempting to evade him.⁶ (*Ibid.*) The *Mann* court held that it was not unconstitutional for Hoefel to enter the open door of Mann's home to arrest him because, "[e]ntry into a residence by an officer to forestall the imminent escape of a suspect constitutes an exception to the warrant requirements of *People v. Ramey* (1976) 16 Cal.3d 263, 276" (*Mann*, at p. 675.)

Here, appellant went into his unprovoked and headlong flight when he saw the officers. Because the neighborhood was known for drug activity, and because Officer Juarez had information from another officer that appellant was possibly in possession of drugs, there was more than mere flight in this case. Juarez asked that appellant stop, but appellant continued in his flight from a public place into a private residence. As in *Thompson, Lavoyne M., Lloyd*, and *Mann*, appellant had committed a jailable offense in the officer's presence, resisting a peace officer (§ 148), justifying Juarez's pursuit of appellant past the threshold of the residence to effectuate an arrest. We therefore distinguish *People v. Hua* (2008) 158 Cal.App.4th 1027, 1036-1037, relied on by

⁶ Hoefel had also concluded that in addition to disturbing the peace, Mann was in violation of section 148. (*Mann, supra*, 155 Cal.App.3d at p. 671.)

appellant, because in that case the only offense was possession of less than 28.5 grams of marijuana, a nonjailable offense in California.

We also note that Juarez's pursuit of appellant was unquestionably hot pursuit. Juarez was immediately behind appellant when appellant entered the apartment. Juarez followed through the door opened by appellant. Here, the hot pursuit also occurred just before 2:00 p.m. and the officer did not make an evening entry into the apartment.

Based on the totality of the circumstances in this case, we conclude that exigent circumstances justified the officer's entry into the dwelling to detain and search appellant after appellant violated section 148, a jailable offense, in the officer's presence. The trial court did not err in denying appellant's suppression motion.

DISPOSITION

The judgment is affirmed.