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

THE PEOPLE,

Plaintiff and Respondent,

v.

JERAMY COLE NOENNICH,

Defendant and Appellant.

F062335

(Super. Ct. Nos. RF005926A, RF005986A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Michael G. Bush, Judge.

Joshua G. Wilson, 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, Louis M. Vasquez, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Dawson, J., and Poochigian, J.

After the court denied his motions to suppress evidence in two cases, Jeramy Cole Noennich pled no contest in case number RF005926A to possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)),¹ possession of a device for injecting a controlled substance, a misdemeanor (§ 11364) and possession of marijuana, a misdemeanor (§ 11357, subd. (b)). In case number RF005986A, he pled no contest to transportation of methamphetamine (§ 11379, subd. (a)), possession of methamphetamine (§ 11377, subd. (a)), and driving on a suspended or revoked license, a misdemeanor with three enhancements for prior violations (Veh. Code, §§ 14601.1, subd. (a), 14601.1, subd. (b)(2)). The court imposed the indicated sentences in both cases and placed Noennich on three years of probation with specified conditions including that he serve one year in county jail and complete a residential drug treatment program. On appeal, Noennich contends the court erred in denying his suppression motion in case number RF005926A because his consent to search was the product of an unlawful and unduly prolonged detention. We affirm.

FACTS

The facts are limited to the search and seizure at issue. On August 6, 2010, at 11:45 p.m., Ridgecrest Police Officers Bill Groves and Chet Rosser were separately dispatched to an apartment building in response to a loud music complaint. Rosser arrived shortly before Groves. As Rosser crossed the 20 feet between his patrol car and the apartment unit's front door, he noticed several individuals standing outside the residence. One of those individuals, Noennich, "fled" into the apartment. When Rosser arrived at the open front door, he saw Noennich standing two to five feet inside the door. Two or three other individuals were inside. The music was playing "loud to medium."

¹ Further statutory references are to the Health and Safety Code unless otherwise indicated.

Rosser told Noennich he had seen him run inside and wanted to speak with him outside. Although Rosser did not touch Noennich, he verbally ordered him to come out.

Once Noennich was outside, Officer Groves told him they were there for a loud music complaint. Noennich replied he had just turned the music down. Groves then asked Noennich if he was on probation or parole. Noennich replied he was on probation for driving on a suspended license. Groves asked if he had anything illegal on him and requested permission to search him. Noennich replied, “sure, go ahead.” Groves retrieved ziplock baggies containing marijuana and apparent methamphetamine and a syringe from Noennich’s pockets. Approximately seven minutes passed between the time Rosser approached the residence and Groves searched Noennich.

The court denied the suppression motions without stating reasons.

DISCUSSION

Noennich contends the search was unlawful because there was no reasonable suspicion to detain him once he turned the music volume down. And his consent to a search was invalid as the fruit of the illegal detention. The People respond that Noennich was not detained when he consented to the search. Alternatively, if he was, the detention was lawful so Noennich’s consent justified the search.

Standard of Review

On review of the denial of a motion to suppress, we defer to the trial court’s factual findings, where supported by substantial evidence, but exercise our independent judgment to determine whether, on the facts found, the search and seizure were reasonable under the Fourth Amendment. (*People v. Camacho* (2000) 23 Cal.4th 824, 830.)

Was There a Detention?

Not every encounter between a police officer and an individual involves a seizure. A seizure occurs when the officer, “by means of physical force or show of authority,”

restrains the individual's freedom of movement. Whether a seizure has occurred is determined by an objective test that asks not whether the individual perceived that he was being ordered to restrict his movement, but whether the officer's words and actions would have conveyed that to a reasonable person. When police engage in conduct that would communicate to a reasonable person that he was not free to ignore the police presence and go about his business, there has been a seizure. (*People v. Celis* (2004) 33 Cal.4th 667, 673.)

In this case, Officer Rosser testified he "did order [Noennich] to come out" from inside the apartment so he could speak to him. A reasonable person would not feel free to ignore an "order" by a uniformed police officer and go about his business. Accordingly, we conclude Noennich was detained when Officer Groves asked if he could search him.

Was the Detention Lawful?

A police officer may lawfully detain a person if the officer knows of specific articulable facts causing him to suspect that the person detained may be involved in some activity relating to crime. (*In re Tony C.* (1978) 21 Cal.3d 888, 893.) The guiding principle is the reasonableness of the particular governmental intrusion. In making our determination, we examine the totality of the circumstances. Where a reasonable suspicion of criminal activity exists, the public rightfully expects a police officer to inquire into such circumstances. (*People v. Wells* (2006) 38 Cal.4th 1078, 1087.) The possibility of an innocent explanation does not negate a reasonable suspicion of criminal conduct. The principal function of the officer's investigation is to resolve that ambiguity and establish whether the activity is in fact legal or illegal. (*In re Tony C., supra*, 21 Cal.3d at p. 894.)

An individual's flight in response to the appearance of a uniformed police officer is behavior that police may legitimately regard as suspicious. Such flight can be a key

factor in establishing reasonable cause to detain. This is so even though the flight from approaching officers may stem from an innocent desire to avoid police contact. (*People v. Souza* (1994) 9 Cal.4th 224, 227, 235.) Flight, like nervous and evasive behavior, is a pertinent factor in determining reasonable suspicion. Unprovoked flight is the consummate act of evasion. It does not necessarily indicate wrongdoing, but certainly suggests it. (*Illinois v. Wardlow* (2000) 528 U.S. 119, 124.)

In this case, Officers Rosser and Groves were dispatched to the residence at 11:45 p.m. because of a complaint of loud music or noise. As Officer Rosser drove up to the residence in his patrol car, he saw several persons outside the residence. He parked and walked toward the front door. As he did so, he heard music at a medium to loud volume and saw Noennich notice him and run inside. Officer Rosser then ordered Noennich—through the open door of the residence—to come outside so the officers could speak with him. These facts present a typical *Tony C.* detention. The officers had reasonable suspicion to detain Noennich to identify his connection to the apartment and the offending music.² (*Mann v. Mack* (1984) 155 Cal.App.3d 666, 674 [when youth admitted he had been playing loud music inside the garage, the officer had probable cause to arrest him for disturbing the peace].) That Noennich fled inside at the officer’s approach provided additional suspicion that criminal activity was afoot and Noennich was involved. Thus, the officers properly detained Noennich to briefly investigate the suspicious activity.

Was the Detention Unduly Prolonged?

Noennich contends there was no justification to detain him once he turned the music volume down and the detention beyond that was unduly prolonged. We disagree.

² Under Penal Code section 415, subdivision (2), it is a misdemeanor to willfully disturb another person by loud and unreasonable noise.

In determining whether a detention is unreasonably prolonged, the court considers whether the police diligently pursued the investigation by a method that was likely to confirm or dispel their suspicions quickly. (*People v. Williams* (2007) 156 Cal.App.4th 949, 959.) Under the circumstances of this case—a loud party that was spilling out into the yard of an apartment building just before midnight—the officers were obligated to briefly investigate possible criminal activity that had been disturbing the neighborhood tranquility by speaking to those present at the residence, even though the music volume had been reduced. Moreover, only about seven minutes elapsed between the time Officer Rosser arrived on the scene and Officer Groves searched Noennich. Nothing in the record indicates the officers did not diligently pursue their investigation in a manner likely to confirm or dispel their suspicions quickly. The detention was not unduly prolonged.

Was Consent to Search Voluntary?

The prosecution bears the burden of showing the defendant's consent to search was voluntary and not a mere submission to an assertion of authority. Whether the consent was voluntary presents a question of fact. We uphold the trial court's express or implied findings on the issue where supported by substantial evidence. (*People v. Miller* (1999) 69 Cal.App.4th 190, 202-203.) The trial court in this case, by implication, found that Noennich's consent to the search was voluntary. That finding is supported by substantial evidence.

Although Officer Rosser ordered Noennich to come out of the apartment, he did not touch him or tell him where to stand. And, in requesting consent to search, Officer Groves did not handcuff Noennich or display a weapon. Nothing in the officers' conduct suggested that Noennich's consent was obtained through duress or coercion. In fact, Officer Groves's request for permission to search carried the implication that it could be refused. (*People v. Monterroso* (2004) 34 Cal.4th 743, 758-759.)

Noennich does not challenge the voluntariness of his consent. Rather, he contends his consent to the search was invalid because an illegal detention renders a subsequent consent ineffective. (*People v. Zamudio* (2008) 43 Cal.4th 327, 341.) This claim fails because we have concluded that Noennich was legally detained, and the record shows his consent to the search was voluntary. The trial court properly denied the motion to suppress evidence.

DISPOSITION

The judgment is affirmed.