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

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

THE PEOPLE,

Plaintiff and Respondent,

v.

JESUS C.,

Defendant and Appellant.

F067403

(Super. Ct. No. JW130564-00)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Peter J. Warmerdam, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)

Candice L. Christensen, 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, Eric L. Christoffersen and John G. McLean, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Gomes, J., and Peña, J.

It was alleged in a juvenile wardship petition (Welf. & Inst. Code, § 602) that appellant, Jesus C., a minor, committed the offense of possession of cocaine (Health & Saf. Code, § 11350, subd. (a)). Appellant moved to suppress evidence, and following a combined jurisdiction/suppression motion hearing (the hearing), the court denied the motion and found the allegation of the petition to be true. Thereafter, the court adjudged appellant a ward of the court, placed him on probation and released him to the custody of his mother.

On appeal, appellant argues the court erred in denying his suppression motion because the police obtained evidence as a result of a statement made by appellant (1) that was not preceded by the admonitions required by *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*), in violation of appellant's rights under the Fifth and Fourteenth Amendments to the United States Constitution, and (2) that flowed directly from a de facto arrest not supported by probable cause, in violation of appellant's Fourth Amendment rights. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Facts

At approximately 1:53 a.m. on March 10, 2013, Bakersfield Police Officer Christopher Peck, while responding to a report of "possible graffiti in progress," observed a car traveling at a "high rate of speed" and "driving erratically."¹ Peck conducted a "traffic stop" of the car. As he stood outside the car, Peck observed that appellant, who was sitting in the back seat, had "a darker color paint on his finger tips and his fingers." Peck asked appellant to get out of the car and appellant complied, at which point, "[p]rior to doing a cursory search for weapons, narcotics, and illegal contraband, [the officer] asked [appellant] if he had anything related to that on him. And if he had any weapons,

¹ Our factual summary is taken from Officer Peck's testimony at the hearing.

illegal contraband and narcotics.” Appellant responded that “he had two bags of coke and two baggies of coke in his front, right coin pocket.” The officer at that point handcuffed appellant, “took him into custody” and removed “[t]wo small baggies of cocaine [from appellant’s] right coin pocket as indicated.”

Thereafter, Peck “advised [appellant] of his *Miranda* Rights.”² Appellant told the officer he “understood his rights,” and thereafter, in response to Peck’s questioning, stated “he purchased [the contraband found in his pocket] from his homey for \$40 earlier that night.”

Appellant’s Suppression Motion

At the outset of the hearing, defense counsel told the court she “wanted to make a motion that there is going to be a *Miranda* issue” Officer Peck was the sole witness at the hearing. After his testimony, defense counsel argued that Peck “violated [appellant’s] rights by knowingly initiating a question that would result in incriminating evidence.” The officer’s questioning, counsel argued, “result[ed] in information that he would have not had otherwise,” and “therefore, all the evidence after in regards to that incriminating statement should be excluded as [the fruit] of the poisonous tree.”

DISCUSSION

Miranda

As indicated above, appellant argues the court erred in denying his suppression motion. Specifically, he first argues, as best we can determine, that the court erred in failing to suppress evidence of his statement to the police that he had “coke” in his pocket, and all evidence obtained by the police after he made that statement, because he made that initial statement during a custodial interrogation not preceded by the

² The parties stipulated that at this point Peck “properly read[] [appellant] his *Miranda* Rights”

admonitions required by *Miranda*. The People do not dispute that appellant was interrogated by police. Rather, the People argue that appellant was not subject to a *custodial* interrogation, and therefore *Miranda* admonitions were not required.

In *Miranda*, the United States Supreme Court “determined that the Fifth and Fourteenth Amendments’ prohibition against compelled self-incrimination required that custodial interrogation be preceded by advice to the putative defendant that he has the right to remain silent and also the right to the presence of an attorney.” (*Edwards v. Arizona* (1981) 451 U.S. 477, 481-482.) Statements obtained in violation of *Miranda* are not admissible to prove the accused’s guilt in a criminal prosecution. (*Miranda, supra*, 384 U.S. at pp. 444-445.)

“But in order to invoke [the] protections [of *Miranda*], a suspect must be subjected to *custodial interrogation*, i.e., he must be taken into custody or otherwise deprived of his freedom in any significant way. [Citation.] [T]he ultimate inquiry is simply whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.” (*People v. Morris* (1991) 53 Cal.3d 152, 197, citing *California v. Beheler* (1983) 463 U.S. 1121, 1125, quoting *Oregon v. Mathiason* (1977) 429 U.S. 492, 495 (*Mathiason*), internal quotation marks omitted, disapproved on another point in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1 (*Stansbury*).) “‘Absent “custodial interrogation,” *Miranda* simply does not come into play.’ [Citation.]” (*People v. Clair* (1992) 2 Cal.4th 629, 679.) The determinative question is “whether a reasonable person in defendant’s position would have felt he or she was in custody.” (*Stansbury, supra*, at p. 830.) Thus, “Custody determinations are resolved by an objective standard: Would a reasonable person interpret the restraints used by the police as tantamount to a formal arrest?” (*People v. Pilster* (2006) 138 Cal.App.4th 1395, 1403 (*Pilster*).)

In making this determination, “the totality of circumstances is relevant, and no one factor is dispositive. [Citation.] However, the most important considerations include

(1) the site of the interrogation, (2) whether the investigation has focused on the subject, (3) whether the objective indicia of arrest are present, and (4) the length and form of questioning.” (*People v. Boyer* (1989) 48 Cal.3d 247, 272, disapproved on another ground in *Stansbury, supra*, 9 Cal.4th at p. 830, fn. 1.) Also relevant is “the ratio of officers to suspects” (*People v. Bellomo* (1992) 10 Cal.App.4th 195, 199.)

The United States Supreme Court has recognized that “[a]ny interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime.” (*Mathiason, supra*, 429 U.S. at p. 495.) These coercive aspects are “substantially offset” when questioning occurs on a public roadway, as during a traffic stop, where “exposure to public view both reduces the ability of an unscrupulous policeman to use illegitimate means to elicit self-incriminating statements and diminishes the [detainee’s] fear that, if he does not cooperate, he will be subjected to abuse.” (*Berkemer v. McCarty* (1984) 468 U.S. 420, 438.) No *Miranda* warnings need be given “until such time as the point of arrest or accusation has been reached or the questioning has ceased to be brief and casual and become sustained and coercive.” (*People v. Manis* (1969) 268 Cal.App.2d 653, 669.)

“In reviewing *Miranda* issues on appeal, we accept the trial court’s resolution of disputed facts and inferences as well as its evaluations of credibility if substantially supported, but independently determine from undisputed facts and facts found by the trial court whether the challenged statement was legally obtained.” (*People v. Smith* (2007) 40 Cal.4th 483, 502.)

Here, the trial court reasonably could have found, based on the undisputed evidence adduced at the hearing, as follows: At the time appellant made his initial incriminating statement he had not been placed under arrest nor was there any evidence of indicia of formal arrest, such as handcuffing; he was in a public place—a public

roadway; Officer Peck was alone; the officer did not display his weapon or make any threats; and the interrogation during which appellant made the incriminating statements was brief. Regarding this last point, there was no sustained questioning, and the record supports the inference that the officer, after stopping the car, immediately approached and asked appellant to get out of the car, and when appellant did so, the officer immediately asked the question that elicited the incriminating response.

On this record, we conclude that under the totality of the circumstances a reasonable person in appellant's position would not have concluded that the restraints placed on him by Officer Peck were tantamount to formal arrest. Therefore, the court did not err in refusing to suppress appellant's initial incriminating statement to police and his subsequent admission that he had previously purchased the contraband found on his person similarly fails. Appellant's claim with respect to his second statement fails for the additional reason that prior to making that statement Officer Peck had given him the required admonitions. Finally, even if there had been a violation of the *Miranda* admonition requirement, appellant's *Miranda*-based claim that the court erred in failing to suppress the physical evidence seized would fail because *Miranda* does not require the suppression of physical fruits of the unwarned statement. (*United States v. Patane* (2004) 542 U.S. 630, 641–644.)

Fourth Amendment

“The Fourth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, guarantees the right to be free of unreasonable searches and seizures.” (*People v. Gallegos* (2002) 96 Cal.App.4th 612, 622.) A “brief investigative stop[]” of a person, commonly referred to in the case law as a detention, is a seizure within the meaning of the Fourth Amendment. (*People v. Souza* (1994) 9 Cal.4th 224, 229.) To justify a detention, police must have a reasonable, articulable suspicion the individual was or will be involved in criminal activity, whereas a formal arrest (or

comparable restraint on a person's liberty) is justified only if the police have probable cause to believe the person has committed a crime. (*People v. Hughes* (2002) 27 Cal.4th 287, 327–328.)

Appellant argues, as best we can determine, that although he was initially detained lawfully, that detention became a de facto arrest when he was handcuffed; at that point there was no probable cause to arrest him; and therefore the de facto arrest violated his Fourth Amendment rights and the evidence obtained by the police as a result of the arrest should have been suppressed. Appellant, however, did not raise this Fourth Amendment claim below. As indicated above, he argued only that his Fifth and Fourteenth Amendment Rights under *Miranda* were violated. The question of whether a police-detainee encounter constitutes a custodial arrest for *Miranda* purposes is different from the questions of whether an encounter that starts as a detention later becomes, by virtue of the conduct of the police, a restraint on liberty comparable to a formal arrest for Fourth Amendment purposes. The former question, as indicated above, turns on whether a reasonable person would conclude the restraints used by police were tantamount to a formal arrest, whereas the Fourth Amendment question concerns the reasonableness of police conduct. (*Pilster, supra*, 138 Cal.App.4th at pp. 1405-1406.) Because appellant did not raise his Fourth Amendment claim below, he is foreclosed from doing so on appeal. (Cf. *People v. Williams* (1999) 20 Cal.4th 119, 136 [the scope of appellate review of denial of a Penal Code section 1538.5 motion to suppress is limited to the issues raised in trial court].)

In any event, were we to reach appellant's Fourth Amendment argument we would find it to be without merit. Appellant's argument is based on a false premise, viz., that there was no probable cause to arrest him *at the time he was handcuffed*. In fact, the undisputed evidence was that appellant was not handcuffed until *after* he (1) told Officer

Peck that he had cocaine on his person and (2) the officer removed the contraband from appellant's pocket. At that point, there was probable cause to arrest appellant.

Appellant likens the instant case to *In re Antonio B.* (2008) 166 Cal.App.4th 435. In that case, a police officer, after (1) detaining a minor whose companion had just tossed a cigarette to the ground and (2) identifying the cigarette as marijuana, placed the minor in handcuffs, pursuant to a “policy” (*id.* at p. 442) of handcuffing any suspect who is detained for further investigation regardless of the circumstances of the stop. The court held: “Because the use of handcuffs on appellant during the stop was not warranted under the circumstances, the seizure constituted an arrest rather than a detention. As *there was no probable cause to arrest appellant at the time he was handcuffed*, the arrest was illegal, and the consent to be searched, which on this record flowed directly from the illegal arrest, was not voluntary. Therefore, the evidence discovered must be suppressed.” (*Id.* at p. 442, italics added.) *In re Antonio B.* is readily distinguishable because, as set forth above, appellant was not placed in handcuffs and arrested until after there arose probable cause to arrest him.

DISPOSITION

The judgment is affirmed.