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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re FERNANDO B., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

FERNANDO B.,

Defendant and Appellant.

G049085

(Super. Ct. No. DL044531)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard Y. Lee, Judge. Affirmed.

Michael P. Goldstein, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland, Robin Urbanski and Amanda E. Casillas, Deputy Attorneys General, for Plaintiff and Respondent.

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A petition was filed in the juvenile court alleging the minor, Fernando B., carried a dirk or dagger concealed upon his person on March 14, 2013 in violation of Penal Code section 21310. The minor contends the juvenile court should have suppressed evidence of the knife because a patdown search of his person was illegal. We affirm the judgment of the juvenile court.

I

FACTS

The minor filed a motion to suppress evidence pursuant to Welfare and Institutions Code section 700.1. He requested suppression of all observations of the police officers, the minor's own statements, all physical and tangible evidence discovered during the stop, seizure, search, hearings and all physical evidence obtained from the minor.

At the beginning of the hearing, the juvenile court explained the purpose of the hearing: "The hearing today will be to hear evidence in support of your motion to suppress as well as to determine whether the allegations are true." Counsel stipulated there was no warrant.

Matthew Rowe, a sergeant with the Fullerton Police Department attached to the gang unit was on patrol in the 100 block of East Wilshire in Fullerton on March 14, 2013 at approximately 2:00 p.m. He said the reason he was patrolling was: "We've had several complaints from the apartment complex in that area as well as residents of not only just transient gathering in the area, but students or kids smoking marijuana, drinking alcohol, hanging out, graffiti, littering, you name it."

From his vehicle, Rowe observed four juveniles sitting on a concrete planter. He and Officer Bolden got out of the vehicle and approached the four, and the minor caught Rowe's attention "because it appeared that he was trying to conceal something or hide something." The minor was "moving his hands about his waist area"

and he made a motion towards his thigh area. Rowe, who was in uniform, observed a plastic container in the planter which looked like marijuana.

Rowe performed a patdown search of the minor. He explained why he performed the search: “We had four individuals, two of us, in an area that has been known for numerous crimes. The fact that they also had a container of what appeared to be marijuana sitting directly behind them in the planter.” In the minor’s front left pants pocket was a fixed blade dagger. Rowe described the dagger: “Overall it’s about 6- 1/2 inches, and I believe the blade itself has about 3 inches, perhaps maybe 3- 1/4 inches, and the sheath was, I believe it was, like a hard metal — or not metal but plastic.” The minor told Rowe he had the knife in his possession for his protection because he had been jumped by gang members in the past.

The juvenile court listened to a recording of the encounter. While it is not clear who is saying what, a transcript of the recording reads that one of the officers told one of the four individuals he was acting like a tough guy and being disrespectful. The other officer told someone to relax.

In evidence was a photocopy of the knife found on the minor; there is a ruler next to the knife in the photocopy. The knife measured almost seven inches long.

In denying the motion to suppress, the juvenile court stated: “I absolutely find credible that there was some form of concealing or motion to hide or conceal which the officer observed in the moments as he approached the four individuals.” The court also stated: “Also as he approaches them and he’s talking to them, there is clearly some form of escalation involved, a growing discord, if you will. Given the whole totality of the circumstances, a reasonably prudent individual would believe or would have concerns that the minor might have something concealed on him, including a weapon

[¶] . . . I do think that the decision to conduct a . . . stop-and-frisk type action on the minor was justified. For all of those reasons the 700.1 motion is denied.”

After hearing further argument, the juvenile court stated: “Then the court finds that count 1 as alleged in the petition is found to be true beyond a reasonable doubt. The minor is a person described by 602 of the Welfare and Institutions Code. The court has considered that this violation is a misdemeanor, it’s charged that way. I will fix it as a misdemeanor as well. [¶] . . . [¶] The maximum sentence is one year.” The juvenile court continued: “Then I am going to declare you and find you to be a ward under 602. You’re a person described by 602. I’m going to order that you be supervised. I’m going to order you to serve 50 hours of voluntary community service. You’re ordered to pay a \$50 restitution fine.”

II

DISCUSSION

The minor contends the juvenile court should have suppressed evidence of the knife, “as the officer neither believed that he was dealing with an armed and dangerous individual nor had reasons for such a belief.” (Capitalization omitted.)

“The Fourth Amendment provides that ‘the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated’ This inestimable right of personal security belongs as much to the citizen on the streets of our cities as to the homeowner closeted in his study to dispose of his secret affairs.” (*Terry v. Ohio* (1968) 392 U.S. 1, 8-9.) “When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.” (*Id.* at p. 24.) “The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. [Citations.]” (*Id.* at p. 27, fn. omitted.)

In *People v. Clayton* (1970) 13 Cal.App.3d 335, the defendant was pulled over for a defective brake lamp, and the police officer observed he made unusual movements, and that “it became reasonable for him to make a weapon search” of Clayton. (*Id.* at p. 337.) The court stated that “failure to take similar precautions has resulted in the death of many law enforcement officers.” (*Ibid.*)

The minor cites *Santos v. Superior Court* (1984) 154 Cal.App.3d 1178 to support his argument the instant search was illegal. However, in *Santos*, unlike the situation in the minor’s case here, while there was evidence of a high crime area and the defendant acted suspiciously and did not have any identification, there was no evidence the defendant did anything to support a conclusion the officer feared for his safety. Nor did the officer testify he feared for his safety. (*Id.* at p. 1182.)

A *Terry* frisk is based on a simple balancing of the government’s interest and the interest to be protected by the Fourth Amendment. (See *Terry v. Ohio, supra*, 392 U.S. at p. 15.) “[T]here is ‘no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails.’ [Citation.]” (*Id.* at p. 21.) On the one hand, we are faced with the interest to be free from unreasonable searches and seizures. On the other hand, we are also concerned with the safety of law enforcement officers investigating suspected crimes.

The fact that the officers were outnumbered is a factor that is properly considered in determining whether there was an objective need to patdown a suspect. (See *People v. Castaneda* (1995) 35 Cal.4th 1222, 1230.) In addition to the minor appearing to conceal something in his pants, and the officers being out numbered four-to-two, there was evidence the setting was unstable. A recording of the encounter demonstrated that one of the officers apparently felt compelled to tell one of the four suspects he was acting like a tough guy. The other officer told one of the suspects to relax. Although the officer who conducted the patdown did not specifically articulate

that he suspected the minor was *armed*, the facts produced at the hearing demonstrated the search was “an objectively reasonable preventive measure.” (*People v. Ritter* (1997) 54 Cal.App.4th 274, 280.)

We find that based on the totality of the circumstances, which included Rowe’s observations of the minor making a movement toward his waist and another movement toward his thigh and that the minor seemed to be trying to conceal something as the officers approached the group, that the juvenile court’s conclusion Rowe was concerned the minor might be armed, is reasonable and supported by substantial evidence. We further find Rowe’s observation of what appeared to be an illegal substance, the need to tell one of the four persons to relax, the fact the officers were outnumbered and reports of criminal activity in the area, led the juvenile court to conclude Rowe patted the minor down because Rowe was concerned for his own safety, which conclusion is also reasonable and supported by substantial evidence. Under the circumstances we find in this record, we conclude Rowe’s search of the minor did not violate the Fourth Amendment.

III

DISPOSITION

The judgment is affirmed.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

THOMPSON, J.