

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re J.A., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.A.,

Defendant and Appellant.

G050891

(Super. Ct. No. DL049852-001)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Deborah C. Servino, Judge. Affirmed.

So'Hum Law Center of Richard Jay Moller and Richard Jay Moller, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Charles Ragland and Joy Utomi, Deputy Attorneys General, for Plaintiff and Respondent.

*

*

*

J.A., who also uses the name Ethan,¹ was determined to be a ward of the court for receiving stolen property (Penal Code, § 496, subd. (a)) after the police found stolen items in his bedroom during a search. On appeal, he argues the search was illegal and he did not consent. We conclude there was substantial evidence to support the juvenile court's finding that Ethan did consent, and accordingly, the search was legal. We therefore affirm the judgment.

I FACTS

In the early morning hours of July 10, 2014, Jungo Shimizu's Irvine home was broken into while his family was sleeping. When Shimizu, who was working overnight, arrived home, he noticed the garage door was open. He later discovered several items missing, including one iPad, two iPhones, several chargers, a Sony camcorder, sports equipment, and a number of gift cards which were described to the police. That afternoon, Shimizu received an e-mail notifying him of an attempt to reset the password on his iTunes account. Using a cell phone locator application, he discovered one of the stolen phones had been activated with the name "Ethan." The locator pinged an apartment complex, and Shimizu notified police about the phone's location.

On July 22, Irvine police detectives Leticia Hernandez and Brian Smith went to the apartment complex and asked the manager whether anyone with the name of "Ethan" was living there. The manager advised the detectives there was a 16-year-old male named Ethan living in a specific apartment.

The detectives went to the door and knocked. Ethan's older brother answered the door, and the detectives asked whether Ethan lived there and explained why

¹ Because he is referred to in the record almost exclusively as Ethan, we do the same here to avoid confusion.

they needed to talk to him. The mother was not home. The brother gave consent for the police to enter and said he would knock on Ethan's bedroom door and see if he was there. The police followed the brother to the bedroom door.

The brother knocked on Ethan's door several times without a response. The police thought someone was in the room, because they first heard a television, which then went silent. The detectives asked Ethan to open the door so they could talk. Smith said he was with the Irvine Police Department and wanted to speak to him about some property. The detectives knocked on the door for 15 to 20 minutes, saying they wanted to speak to Ethan about a burglary, but got no response. They asked Ethan numerous times to open the door. During this time, the brother told the detectives that he had seen Ethan with "stuff that he shouldn't have."

Smith said, "Ethan you need to open the door," but no response followed. He tried to call Ethan's mother to get Ethan to come out of the bedroom, but no one, apparently, had a key to the bedroom other than Ethan. Smith may have tried the door to see if it was locked.

After talking with the brother a bit more, Smith went to call his sergeant to ask for guidance. He related that an iPhone from a residential burglary had pinged in the apartment, and the phone had been activated over to Ethan and a minor named Ethan lived in the apartment. He related that Ethan was in his room behind a locked door and asked what he was allowed to do.

While Smith was on the phone, Hernandez approached the bedroom door, identified herself and said she needed to speak to him. She later testified she "just wanted to get facts and I just wanted to ask him additional questions on this case because the evidence kind of led us to his apartment . . . and that's why we were there."

After the call to his sergeant, Smith said the following, characterized by Ethan's brief as a "threat": "Hey Ethan are you going to open the door dude? Come on open up dude. I'm going to keep coming back until you talk to me."

Hernandez approached the door again, saying there were two sides to every story and she had only one side at the moment. Ethan spoke to her through the closed door. He said a man outside a video game store had sold him a cell phone, iPad, and several gift cards for \$36.

Ethan finally opened the door, allowing Hernandez to see inside, then closed the door, reentered the bedroom, and came out again with an iPad, iPhone, and a charging cable, closing the door behind him. Hernandez thanked him for coming out and said she wanted to return the items to their owners, and get more detail about how he obtained them. She asked Ethan for consent to search his bedroom, and “He consented. He said yes.” Smith did not recall exactly what Ethan said, but testified Ethan stepped aside and let the detectives in his room.

The detectives noticed and asked about numerous items in the room, including cables for a high-end camera and sports equipment. At some point, Ethan asked the police to stop searching, and they complied. There was no arrest at the time. Shimizu later confirmed the sports equipment was his.

Smith later applied for a search warrant based on the items the detectives had seen in Ethan’s bedroom. Upon execution, numerous other items linked to the burglary were found, including gift cards, sports equipment, and electronics. Ethan was arrested for possession of stolen property. Most of the items stolen were returned to Shimizu, with the exception of several that were not located.

Ethan was charged with numerous offenses in a petition under Welfare and Institutions Code section 602, including residential burglary and two counts of receiving stolen property. Before trial, Ethan moved to suppress the search, claiming he was coerced and any consent was involuntary. The court denied the motion. At the trial’s conclusion, the court dismissed the burglary count and found true the allegations on both counts of receiving stolen property. Ethan was declared a ward of the court, which set a maximum period of confinement of three years, and imposed a 90-day commitment term.

II DISCUSSION

On appeal, Ethan argues the prosecution failed to meet its burden to show that he consented to open his door and allow the police to search. He claims any consent was involuntary and affected by duress or coercion.

Pertinent Law

Generally, the Fourth Amendment to the United States Constitution prohibits a warrantless entry into a person's home. (*People v. Robles* (2000) 23 Cal.4th 789, 794-795.) Consent, however, is an exception to the warrant requirement. (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 219.) When the prosecution relies on consent to justify a search, it has the burden to demonstrate the consent was voluntary. To qualify as voluntary, consent cannot be coerced through explicit or implicit threats or merely a submission to express or implied assertions of authority. (*People v. Zamudio* (2008) 43 Cal.4th 327, 341; *People v. Boyer* (2006) 38 Cal.4th 412, 445-446.) The question of whether consent was voluntary or the product of duress or coercion is a question of fact to be determined from the totality of the circumstances. (*Schneckloth v. Bustamonte, supra*, 412 U.S. at p. 227.)

A ““knock and talk”” procedure, in which an officer knocks on the door, identifies him or herself, and asks to speak to a resident as part of an investigation is permitted. (*People v. Rivera* (2007) 41 Cal.4th 304, 310; *People v. Jenkins* (2004) 119 Cal.App.4th 368, 374.) The mere presence of a police officer does not make the encounter a detention. (*People v. Rivera, supra*, 41 Cal.4th at pp. 308-310.)

Standard of Review

The standard of review in this matter is well settled. We defer to the lower court's findings of fact if supported by substantial evidence, but exercise independent

judgment in determining whether the Fourth Amendment was violated. (*People v. Glaser* (1995) 11 Cal.4th 354, 362; see also *People v. Weaver* (2001) 26 Cal.4th 876, 924.) The same standards apply in juvenile proceedings. (*In re Lennies H.* (2005) 126 Cal.App.4th 1232, 1236.)

Voluntary Consent

Ethan argues that because the police knocked on his door for at least 15 to 20 minutes, they were on notice that Ethan had refused to open the door and were therefore “unreasonably persistent.” But while this is one factor to be considered, it is not determinative, as we consider the totality of the circumstances. (*Schneckloth v. Bustamonte, supra*, 412 U.S. at p. 227.) While the length of time the officers sought to persuade Ethan to open the door is a factor, it is only one factor, and given the remainder of the circumstances, it may not be on the side of the scale Ethan hopes. Ethan also relies heavily on Smith’s “threat”: “Hey Ethan are you going to open the door dude? Come on open up dude. I’m going to keep coming back until you talk to me.”

In support of this assertion, Ethan claims this case is “controlled” by *Johnson v. U.S.* (1948) 333 U.S. 10, 12. He argues that the officer in that case knocked on the door and told the defendant “I want to talk to you a little bit.” According to Ethan, *Johnson* “held that [the] search was not voluntary.” This is both a selective recitation of the facts in that case and a misapprehension of its import. We need not address the facts because the holding in *Johnson* had nothing to do with consent and its voluntariness or lack thereof – it was about whether the officer’s observations (specifically the smell coming from a room) justified a warrantless search, or whether the search could be considered as incident to an arrest. (*Id.* at pp. 14-16.) Neither the words “consent” nor “voluntary” appear anywhere in the opinion.

Ethan also quotes from *People v. Poole* (1986) 182 Cal.App.3d 1004. In that case, “the record is completely barren of any evidence showing that Poole himself

consented to the entry.” (*Id.* at pp. 1011-1012.) The door was opened by a third party, whose role at the premises was unclear from the record. “He may well have been the owner or a co-occupant of the premises, but he may just as well have been a casual visitor, a meter reader, a pizza delivery agent, or an encyclopedia salesman. Whatever his status, the uncontradicted evidence showed that he opened the door in response to a police command. The officers plainly said ‘open the door.’ The right to seek interviews with suspects at their homes does not include the right to demand that a suspect open his door.” (*Ibid.*) Thus, any consent to search was invalid because there was no consent to enter in the first place. Here, Ethan both made the decision to open the door and then expressly consented to the search.

Another difference between *Poole* and the instant case is that the demand to open the door was ““Police Department, open the door. We would like to talk to you.”” (*People v. Poole, supra*, 182 Cal.App.3d at p. 1009.) It was a single demand, not a request. That is not the case here. The length of the time the detectives were present supports the argument that their attempts to talk to Ethan consisted of persuasion, not demands. The detectives did not behave as if they had a right to enter regardless of Ethan’s consent. Further, the statement Ethan characterizes as Smith’s purportedly pivotal “threat” did not result in Ethan’s decision to open the door. Rather, it was Hernandez’s multiple explanations for their presence and attempts at persuasion.

At no time did the detectives threaten Ethan with violence or arrest, draw their weapons, trick him, or shout at him. Smith’s statement that he would “keep coming back” is not determinative, nor do we conclude it was so overbearing or coercive that it should control the outcome of this case. Despite his age, Ethan demonstrated that he was capable of reasoning and making decisions. Just as he allowed the police to enter and search, he decided thereafter that he did not wish the search to continue – a decision with which the police complied. His own perception that he could ask the police to stop is

further evidence that he did not feel compelled or coerced, but was able to ask the detectives to stop.

Substantial evidence, therefore, supports the juvenile court's conclusion that given the totality of the circumstances, Ethan consented to the search. Denying the motion to suppress was therefore proper.

III
DISPOSITION

The judgment is affirmed.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.