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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

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

H038386
(Santa Clara County
Super. Ct. No. JV36246)

THE PEOPLE,

Plaintiff and Respondent,

v.

J.V.,

Defendant and Appellant.

After the juvenile court denied minor J.V.'s motion to suppress evidence under Welfare and Institutions Code section 700.1, the minor admitted that he had possessed a firearm while under the influence (Health & Saf. Code, § 11550, subd. (e)), possessed a loaded firearm in a vehicle (Pen. Code, § 25850, subd. (a)), possessed controlled substance paraphernalia (Health & Saf. Code, § 11364.1), and possessed stolen property (Pen. Code, § 496, subd. (a)). The juvenile court sustained the petitions alleging these offenses and continued the minor as a ward of the court. The juvenile court committed the minor to the custody of the probation officer for placement in the Enhanced Ranch Program and set the maximum term of confinement at 14 years and six months.

On appeal, the minor contends: (1) the juvenile court erred in denying his motion to suppress evidence, and (2) the true finding that he violated Penal Code section 25850, subdivision (a) is a misdemeanor and not a felony. We affirm.

I. Statement of Facts

At approximately 9:45 p.m. on April 5, 2012, San Jose Police Officer Jeff Yates received a dispatch call about two males who were wearing Halloween masks in the parking garage of the Almaden Family Apartments. They were associated with a red truck. Yates drove to the garage, followed another car past the locked gate, and drove around in the garage. However, he did not locate the individuals with the Halloween masks. As Yates was about to exit the garage, he saw a red truck, which was occupied by a Hispanic male driver and a passenger, enter the facility. Yates ran the truck's license plate and learned that it was stolen. Yates could not describe the driver's appearance, and he did not get a good look at the person in the passenger seat.

Since he had driven through the locked gate, Yates asked another individual to open the gate into the garage. Yates re-entered and began searching for the red truck a few minutes after he had completed his initial inspection of the garage. Yates drove around the corner of the first aisle and saw the same red truck, which was parked in a stall. A Hispanic male, who was later identified as the minor, was standing at the driver's door of a BMW parked next to the red truck. The BMW was backed into the parking stall while the truck was parked in the opposite direction. The driver's door of the BMW was open "a little bit." The minor, who was holding car keys, shut the door, came around the BMW, and sat on the front fender. The minor was "a car length" from the truck.

Yates asked the minor to walk toward him and to put his hands up. The minor then walked 15 feet from the BMW to Yates. Yates placed the minor in handcuffs and pat searched him for officer safety. Yates visually cleared both vehicles by looking through the windows. He did not open the doors to the vehicles. There were no other

officers present at this time. Yates explained that he was “not sure if anybody was occupying [the stolen truck] and if the suspect was still around, if he was one of those suspects.” The lighting conditions were adequate for Yates to conduct an investigation.

After Yates determined that there was no one else in the area of the BMW or near the red truck, he returned to speak to the minor. Yates noticed that the minor’s eyes were fluttering and his pupils were dilated. Yates asked the minor to close his eyes. When Yates observed that the minor’s eyelids were fluttering rapidly, he concluded that the minor was under the influence of a stimulant. The minor told Yates that he had used marijuana and cocaine. He also identified himself and stated that his father was the owner of the BMW. Yates observed the symptoms of the minor’s drug use “a minute” after he had asked the minor to come over to him. The key in the minor’s hand had a BMW logo on it. A records check for the minor revealed that he had a warrant for his arrest and was on juvenile probation. Yates informed the minor that he was under arrest after he observed objective symptoms of stimulant use and he learned of the minor’s arrest warrant.

At that point, Yates’s partner arrived and Yates put the minor in the back of the patrol vehicle. Yates had not excluded the minor from being a suspect in the theft of the truck. Yates searched the BMW and found hockey equipment, a loaded Ruger handgun in a leather jacket, a methamphetamine pipe, and a cell phone.

The trial court denied the motion to suppress evidence. The trial court stated: “I think . . . that there is inevitability here in terms of the unlawfulness of the items seized. Additionally I think the police officer’s steps, under the circumstances was reasonable. And I think that he did have a right. I think I believe the police officer would have been nervous in that situation and would have wanted to make sure that he had the safe ability to conduct his investigation. I think he had an obligation to investigate, and could have been that this, person, which turned out to be [the minor], was completely innocent, just

getting into his dad's car but I think he had an obligation and a right to check that out and I think that each step from then on was lawful.”

II. Discussion

A. Motion to Suppress Evidence

The minor contends that the juvenile court erred in denying his motion to suppress evidence.

“The standard of review of a trial court’s ruling on a motion to suppress is well established and is equally applicable to juvenile court proceedings. ““On appeal from the denial of a suppression motion, the court reviews the evidence in a light favorable to the trial court’s ruling. [Citation.] We must uphold those express or implied findings of fact by the trial court that are supported by substantial evidence and independently determine whether the facts support the court’s legal conclusions.” [Citation.]’ [Citation.]” (*In re Lennies H.* (2005) 126 Cal.App.4th 1232, 1236.)

The Fourth Amendment, made applicable to the states through the due process clause of the Fourteenth Amendment, protects the individual against unreasonable searches and seizures. (*Mapp v. Ohio* (1961) 367 U.S. 643, 656-660.) When a police officer engages in conduct that violates the Fourth Amendment, the evidence obtained through such conduct is subject to the exclusionary rule. (*People v. Mayfield* (1997) 14 Cal.4th 668, 760.)

The protection of the Fourth Amendment extends to brief investigatory stops that fall short of an arrest. (*Terry v. Ohio* (1968) 392 U.S. 1, 16-17.) “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.) The reasonable suspicion that justifies a detention is “simply . . . ‘a particularized and objective basis’ for suspecting the

person stopped of criminal activity.” (*Ornelas v. United States* (1996) 517 U.S. 690, 696.)

Here, it is not disputed that Yates had a reasonable suspicion that a crime had occurred, because he had run a license plate check of the red truck and learned that it was stolen. However, there was no objective basis for the officer to suspect that the minor had been involved in the theft of the truck. Yates saw the minor a “car[’s] length” from the stolen truck and entering the BMW. Before he engaged in any conversation with the minor, Yates ordered him to walk towards him with his hands up and handcuffed him. Thus, under the totality of the circumstances, there were insufficient facts to believe the minor might be involved in criminal activity.

The Attorney General argues that a “brief detention to discuss [the minor’s] possible connection to the truck was constitutionally permissible.” The cases upon which she relies are distinguishable. Unlike the present case, *People v. Lloyd* (1992) 4 Cal.App.4th 724 (*Lloyd*), *People v. Conway* (1994) 25 Cal.App.4th 385 (*Conway*), and *People v. McCluskey* (1981) 125 Cal.App.3d 220 (*McCluskey*), involved observation by law enforcement of activity that occurred very late at night. In *Lloyd*, the defendant was seen standing alone next to a building where a silent alarm had just been triggered at 4:00 a.m. (*Lloyd*, at pp. 733-734.) In *Conway*, two minutes after the officer received a report of a burglary in progress, he saw the defendant driving from the area at 3:00 a.m. (*Conway*, at p. 390.) In *McCluskey*, shortly after a robbery occurred, the officer observed the defendant, who matched the description of the suspect, driving from the area at about 1:00 a.m. (*McCluskey*, at pp. 226-227.) Here, the minor was observed exiting the BMW at 9:45 p.m. (See *People v. Perrusquia* (2007) 150 Cal.App.4th 228, 234 [11:26 p.m. was not sufficiently late enough to constitute a factor that would support a detention].)

People v. Juarez (1973) 35 Cal.App.3d 631 (*Juarez*) and *People v. Peralez* (1971) 14 Cal.App.3d 368, 378 (*Peralez*) also do not assist the Attorney General. *Juarez* held that the defendant’s “[p]resence in the general area of a recent burglary accompanied by

an explanation of doubtful veracity constitutes cause to suspect the person's connection with the crime sufficient to justify his detention for further investigation. [Citations.]” (*Juarez*, at pp. 635-636.) In *Peralez*, the officer asked the defendant why he was in the area after he was seen leaving from a house where a prowler had been reported at 11:30 p.m., and the defendant stated that he was seeking employment as a landscaper. (*Peralez*, at pp. 372-372.) *Peralez* held the detention was permissible. (*Peralez*, at pp. 376-377.) In contrast to *Juarez* and *Peralez*, here, the minor did not display any evasiveness in his conduct and had no opportunity to explain his presence in the area before he was handcuffed.

Though the detention of the minor was not constitutionally permissible, we conclude that the connection between the antecedent illegality and the discovery of the evidence was attenuated.

“We need not hold that all evidence is ‘fruit of the poisonous tree’ simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is ‘whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.’ [Citation.]” (*Wong Sun v. United States* (1963) 371 U.S. 471, 487-488.) “[B]ut-for cause, or ‘causation in the logical sense alone,’ [citation], can be too attenuated to justify exclusion” (*Hudson v. Michigan* (2006) 547 U.S. 586, 592.)

In *People v. Brendlin* (2008) 45 Cal.4th 262 (*Brendlin*), the officer searched the passenger of an illegally detained vehicle after he discovered a warrant for his arrest. (*Id.* at p. 268.) In answering the question “‘whether the chain of causation proceeding from the unlawful conduct ha[d] become so attenuated or ha[d] been interrupted by some intervening circumstance so as to remove the “taint” imposed upon that evidence by the original illegality,’” *Brendlin* considered the three factors set forth in *Brown v. Illinois* (1975) 422 U.S. 590. (*Id.* at 269.) These factors are: “‘the temporal proximity of the

Fourth Amendment violation to the procurement of the challenged evidence, the presence of intervening circumstances, and the flagrancy of the official misconduct.’ [Citations.]” (*Ibid.*)

Brendlin applied these factors and held that the illegal detention was attenuated. *Brendlin* noted that there were “only a few minutes” between the unlawful traffic stop and the search incident to the arrest, but this factor was outweighed by the other factors. (*Brendlin, supra*, 45 Cal.4th at p. 270.) *Brendlin* next reasoned that the existence of an outstanding warrant “is an intervening circumstance that tends to dissipate the taint caused by an illegal traffic stop. A warrant is not reasonably subject to interpretation or abuse [citations], and the no-bail warrant here supplied legal authorization to arrest defendant that was completely independent of the circumstances that led the officer to initiate the traffic stop. [Citation.]” (*Id.* at p. 271.) *Brendlin* also stated that there was no evidence that the officer acted in bad faith or conducted the traffic stop “in the hope that something [else] might turn up.’ [Citations.]” (*Ibid.*) Thus, *Brendlin* concluded that the evidence “found on defendant’s person and in the car was not the fruit of the unlawful seizure.” (*Id.* at p. 272)

Similarly, here, the time between the illegal detention and the search of the BMW was only a couple of minutes, which was outweighed by the other two factors. As in *Brendlin*, the officer searched the BMW only after learning of the arrest warrant for the minor and his status as a probationer, which tended “to dissipate the taint” of the illegal detention. (*Brendlin, supra*, 45 Cal.4th at p. 271.) Moreover, there was no evidence that Yates engaged in flagrant misconduct. Though there was insufficient evidence to justify a detention, the record suggests that the officer was acting in good faith in pursuing the investigation of the stolen truck. There is also no evidence that he detained the minor in order to search his vehicle for possible contraband.

The minor argues, however, that *Brendlin* is inapposite because Yates searched the BMW and discovered the evidence that he sought to suppress before he learned of the warrant and the search condition. We disagree.

Drawing all inferences in favor of the trial court's ruling, we conclude that the record does not support the minor's position. On direct examination, Yates testified that there were "two different situations going on, . . . what is going on with this vehicle, and then the other vehicle and the minor that had the warrant for his arrest. So I put him in the back of the patrol vehicle and um, we had to search the vehicle and see if there was any evidence and then I needed to come back and eventually speak with the minor." He further testified that he searched the BMW because the minor was on probation, had objective symptoms of drug use, and had admitted drug use. He also informed the minor that he was under arrest when he found out that the minor had a warrant, which was before he searched the BMW. This testimony establishes that the officer did not search the BMW prior to learning that the minor was on juvenile probation and there was a warrant for his arrest.

On cross-examination, Yates testified that he learned that there was an arrest warrant for the minor after he "cleared the car" but before he searched it. The following exchange then occurred: "Q . . . [W]hen you say 'search' you mean like make a physical search? [¶] A Because there -- we physically search make sure nobody hiding or anything. Like, I know, detailed search if there is any evidence left behind. If you would clarify? [¶] Q When the first search that you referred to the less detailed of the two? [¶] A Yes. [¶] Q That still involved opening the car and looking inside; right? [¶] A Yes. [¶] Q And it was at that time that you observed some of the things that you detailed in your report; is that right? [¶] A Yes -- can you be more specific? [¶] Q For instance the hockey equipment in the front seat. And hockey equipment is really large? [¶] A Yes. [¶] Q So when you opened that car you initially search, you saw that hockey equipment? [¶] A Yes. I saw through the window prior to opening it." This testimony

appeared to contradict the officer's earlier testimony. The prosecutor then asked on redirect examination whether the officer opened the door of the BMW when he "visually cleared" it. Yates responded that he did not and that he "just looked through the windows" to "ma[k]e sure that nobody was in there." Based on this record, there was substantial evidence to support the juvenile court's implied finding that Yates did not search the BMW until after he had learned that there was an arrest warrant for the minor and he was on juvenile probation.

B. Penal Code Section 25850

The minor next contends that none of the circumstances that would have elevated the true finding that he violated Penal Code section 25850, subdivision (a) to a felony were pleaded and proven by the prosecutor. Thus, he contends that the finding constitutes a misdemeanor, and not a felony, and the judgment must be amended.

In the present case, count 2 of the petition alleged that "the crime of *CARRYING A LOADED FIREARM ON THE PERSON OR IN A VEHICLE - DEFENDANT NOT IN LAWFUL POSSESSION OF THE FIREARM*, in violation of *PENAL CODE SECTION 25850(a), a Felony*, was committed by J[.] V[.] who did, while not in lawful possession of the firearm, carry a loaded firearm, a(n) 9 mm handgun, on his/her person and in a vehicle while in a public place and on a public street in an incorporated city and in a public place and on a public street in a prohibited area of unincorporated territory." (Italics added.)

Penal Code section 25850, subdivision (a) provides: "A person is guilty of carrying a loaded firearm when the person carries a loaded firearm on the person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory." Subdivision (c) of this section outlines the punishment and provides in relevant part: "Carrying a loaded firearm in violation of this section is punishable, as follows:

[¶] . . . [¶] (4) Where the person is not in lawful possession of the firearm, or is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.”

Here, count 2 of the petition alleged a violation of Penal Code section 25850, subdivision (a) as a felony and included the language of subdivision (c)(4), that the minor was “not in lawful possession of the firearm.” Thus, the minor was provided with sufficient notice that he was being charged with a felony as outlined in subdivision (c)(4) of Penal Code section 25850. The minor could not lawfully possess a firearm because he was a minor (Pen. Code, § 29610), a ward of the court, and previously found to have committed a robbery, which is an offense under Welfare and Institutions Code section 707, subdivision (b) prohibiting the possession of a firearm. Prior to admitting the allegations in the petition, the minor also signed a waiver form that stated the maximum custody time for the offense was three years, which is consistent with the custody time required if the offense constituted a felony. Accordingly, the juvenile court correctly found that the conduct constituted a felony.

III. Disposition

The order is affirmed.

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Márquez, J.