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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

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

THE PEOPLE,
Plaintiff and Respondent,
v.
T. C.,
Defendant and Appellant.

A120235
(Contra Costa County
Super. Ct. No. J0701626)

In a Welfare and Institutions Code section 602 (Section 602) petition filed on September 4, 2007 and amended on October 30, 2007, the People alleged T.C. (the minor) received stolen property (Pen. Code § 496, subd. (a))¹, possessed a firearm (§ 12101, subd. (a)), and possessed marijuana (Health and Saf. Code, § 11357, subd. (b)). The charges arose out of two incidents, one on April 25, 2007 and another on October 27, 2007. In two separate motions, the minor moved to suppress evidence seized during each incident. The juvenile court denied the motions to suppress and sustained the charges

¹ Unless otherwise noted, all further statutory references are to the Penal Code.

that the minor received stolen property and possessed a firearm. At the dispositional hearing, the court adjudged the minor a ward of the court.

On appeal, the minor contends the court erred in denying both motions to suppress. We conclude the court properly denied the minor's motion to suppress evidence seized during the search on October 27, 2007. We also conclude, however, that the court erroneously denied the minor's motion to suppress evidence seized during the search on April 25, 2007. Accordingly, we reverse the jurisdictional order sustaining the stolen property charge. We also reverse the dispositional order and remand for a new dispositional hearing.

FACTUAL AND PROCEDURAL BACKGROUND

The April 25, 2007 Incident

At approximately 11:30 p.m. on April 25, 2007, Brentwood Police Sergeant Tim Herbert was driving a patrol car on Lexington Street when he saw a car "packed" with "a large number of kids." The car caught Herbert's attention because of the number of people in the car and the time of night. Herbert pulled up behind the car and performed a license plate check on his car's mobile data system (MDS). As he continued to follow the car, Herbert noticed that the car's left brake light was out. Shortly thereafter, Herbert received information from MDS that the car was stolen.

The car stopped. The driver got out of the car and walked up to the front door of a house. Herbert got out of his car and yelled at the driver "to come over here to talk to [him]." Herbert contacted police dispatch to confirm that the car was stolen and to request backup. Then he approached the car and spoke briefly to the driver. As Herbert was talking to the driver, police dispatch confirmed that the car was stolen. Herbert arrested the driver. As additional police officers arrived, Herbert "ordered all [of] the

occupants in the vehicle to get their hand[s] in the air at gunpoint.”² According to Herbert, the stop was “high-risk” because the car was stolen. The minor — a male who was sitting in the front passenger seat — was the first person Herbert ordered out of the car. The minor was not holding a weapon; Herbert could not tell if he had “bulges in his clothing.” The minor complied with Herbert’s commands. Herbert did not suspect that the minor had committed a violent crime.

Herbert ordered the minor to walk toward Jon Roberts, a police officer who responded to Herbert’s call for backup. Pursuant to the high-risk stop, Roberts handcuffed the minor and felt the outside of his clothing for weapons. Roberts explained that he searched the minor “for officer safety and for destruction of evidence.” He did not feel any weapons. Roberts then emptied the minor’s pockets and placed them on the trunk of the patrol vehicle. Among the items Roberts removed from the minor’s pockets were a checkbook, a driver’s license, and credit cards, all of which belonged to Shellee Harris. Roberts explained that he removed the items from the minor’s pockets because the officers “had five other people in the car . . . and I didn’t have time to go through everything looking for identification. [The minor] didn’t have identification on him at the time, and he was going into the rear seat of a patrol vehicle where he was not going to be watched.”

On September 4, 2007, the People filed a Section 602 petition alleging the minor received stolen property (§ 496, subd. (a)).

The October 27, 2007 Search and the Minor’s Motions to Suppress

On October 17, 2007, a warrant was issued for the minor’s arrest pursuant to the Section 602 petition alleging a violation of section 496, subdivision (a). To serve the warrant, Pittsburg Police Officers Robert McSorley and Rodney Gauthier went to the

² During this type of stop, officers search the occupants of the car to “make sure they don’t have weapons, narcotics, handcuff keys, anything that can be used as [a] weapon or used to escape before being placed into the rear seat of the [patrol] vehicle.”

home the minor shared with his mother. When the officers arrived, the minor's mother answered the door and told them that the minor was in his bedroom, changing and getting ready to leave. The minor came out of the back bedroom carrying a duffel bag. He was wearing a black, puffy jacket. The officers said, "hey [T.], come here" and the minor walked toward them. Gauthier told the minor to "drop the bag," and the minor complied. Then Gauthier told the minor to take off his jacket so that he could handcuff him. In response, the minor dropped the jacket "on the floor right next to where" McSorley was standing. Gauthier handcuffed the minor.

Gauthier searched the minor and found marijuana and \$295 in cash. After the search, the minor asked McSorley to "pick up the jacket and take it into his bedroom." McSorley complied: he picked up the jacket and began to walk down the hall toward the minor's bedroom. As he did so, he noticed that the jacket "felt a little bit heavier than a jacket should. And the hallway was dark, so [he] turned back around and walked back into the living room area where everybody else was standing and began to search the pockets." McSorley found a loaded handgun in the right pocket of the jacket. McSorley was standing three feet from the minor when he searched the jacket. The gun was concealed within the jacket pocket.

On October 30, 2007, the People amended the Section 602 petition to allege the minor possessed a firearm (§12101, subd. (a)), and possessed marijuana (Health & Saf. Code, § 11357, subd. (b)). On November 1, 2007, the minor moved to suppress the items seized during the April 25, 2007 incident. On November 30, 2007, the court held a combined hearing on the motion to suppress and the issue of jurisdiction. Throughout that hearing, counsel for the minor raised several "*Harvey-Madden*" objections.³ The

³ The *Harvey-Madden* rule is drawn from *People v. Harvey* (1958) 156 Cal.App.2d 516, and *People v. Madden* (1970) 2 Cal.3d 1017. The *Harvey-Madden* rule " 'govern[s] the manner in which the prosecution may prove the underlying grounds for arrest when the authority to arrest has been transmitted to the arresting officer through police

court overruled the objections. At the conclusion of the hearing, the court denied the minor's motion to suppress and sustained the charge that the minor received stolen property in violation of section 496, subdivision (a).

On November 8, 2007, the minor filed a second motion to suppress, this one to suppress evidence seized during the October 27, 2007 search. The court combined the hearing on the motion to suppress with another jurisdictional hearing on the charges arising out of the October 27 incident. At the conclusion of that hearing, the court denied the motion and found true, as charged, that the minor possessed a firearm in violation of section 12101, subdivision (a).

At the dispositional hearing on December 5, 2007, the court adjudged the minor a ward of the court, ordered him to attend a juvenile camp for a mandatory term of six months, and imposed various conditions of probation.

DISCUSSION

As noted above, the minor moved to suppress evidence seized during the incident on April 25, 2007 as well as evidence seized pursuant to the incident on October 27, 2007. The minor contends the court erred in denying both motions.

Standard of Review

In reviewing the juvenile court's denial of appellant's motion to suppress evidence, "we view the record in the light most favorable to the [juvenile] court's ruling, deferring to those express or implied findings of fact supported by substantial evidence. [Citations.] We independently review the [juvenile] court's application of the law to the facts. [Citation.]" (*People v. Jenkins* (2000) 22 Cal.4th 900, 969; see also *In re Lennies*

channels.' " (*People v. Gomez* (2004) 117 Cal.App.4th 531, 540, citing *People v. Collins* (1997) 59 Cal.App.4th 988, 993.) The *Harvey-Madden* rule requires only that the prosecution prove that "the source of the information on which the arrest was based was " 'something other than the imagination of the officer' " who did not testify. (*People v. Armstrong* (1991) 232 Cal.App.3d 228, 245-246; see also *People v. Ramirez* (1997) 59 Cal.App.4th 1548, 1553.)

H. (2005) 126 Cal.App.4th 1232, 1236 [same standard of review applies to juvenile court proceedings].)

The Denial of the Minor's Motion to Suppress Evidence Seized During the April 25, 2007 Incident Was Erroneous

The minor argues the juvenile court improperly denied his motion to suppress the items seized during the April 25, 2007 search for two reasons: (1) the prosecution did not satisfy the *Harvey-Madden* rule and “therefore did not establish reasonable grounds for detaining” him; and (2) even if he was lawfully detained, the search of his pockets was unlawful. We need not determine whether the prosecution met its burden under *Harvey-Madden*. Even assuming *Harvey-Madden* was satisfied, we conclude that the search of the minor was unlawful.

There can be no dispute that Herbert lawfully stopped the car for having a broken brake light. But whether Roberts was justified in searching the pockets of the minor, a passenger, is a separate issue. (*People v. Medina* (2003) 110 Cal.App.4th 171, 176.) As noted above, Herbert ordered the minor out of the car at gunpoint. After the driver was arrested, Roberts handcuffed the minor and patsearched him. The People concede the minor was placed under arrest when Roberts handcuffed him. Probable cause to arrest “exists when the facts known to the arresting officer would lead a person of ordinary care and prudence to entertain an honest and strong suspicion that the person arrested is guilty of a crime.” (*People v. Price* (1991) 1 Cal.4th 324, 410, superseded by statute on other grounds as stated in *People v. Hinks* (1997) 58 Cal. App.4th 1157, 1161-1165.)

The People rely on a single case, *Maryland v. Pringle* (2003) 540 U.S. 366 (*Pringle*), to support their argument that the search was conducted pursuant to a lawful arrest because the minor was a passenger in a stolen car. In *Pringle*, a police officer stopped a car; when the driver was retrieving his vehicle registration, the officer saw a large amount of rolled-up cash in the glove compartment directly in front of the defendant, a passenger in the front seat. (*Id.* at p. 368.) A third man was also in the car.

The officer obtained the driver's consent to search the car and found five plastic baggies of cocaine behind the back-seat armrest and accessible to all three men. (*Ibid.*) When questioned, the three men failed to offer information regarding the ownership of the cocaine or the money. (*Id.* at pp. 368-369.) The officer then arrested all three occupants. (*Id.* at p. 369.) The United States Supreme Court held that it was "an entirely reasonable inference from these facts that any or all three of the occupants had knowledge of, and exercised dominion and control over, the cocaine. Thus, a reasonable officer could conclude that there was probable cause to believe [the defendant] committed the crime of possession of cocaine, either solely or jointly." (*Id.* at p. 372.)

Pringle does not — as the People suggest — stand for the proposition that a police officer may arrest an individual merely because that person is the front seat passenger in a lawfully detained vehicle. (See, e.g., *In re Carlos M.* (1990) 220 Cal.App.3d 372, 382 [the defendant's mere proximity to a person suspected of criminal conduct, by itself, does not provide grounds to suspect the defendant of wrongdoing].) *Pringle* holds that there is probable cause to arrest a passenger in a vehicle where there is evidence from which a reasonable officer may draw an inference that the passenger is jointly involved in criminal activity. Seeking to establish some evidence of a criminal enterprise, the People contend "[i]t was entirely reasonable to conclude that [the occupants of the car] had taken the car for a joyride. To permit only the arrest of the driver . . . would ignore the probability of the complicity of the other occupants in the theft." This strained argument fails. There is no evidence that the car had been recently stolen or stolen by the juveniles in concert and taken for a joyride; nor is there any evidence that the minor somehow participated or assisted in that purported theft.

People v. Williams (1970) 9 Cal.App.3d 565, 568-569, is on point. There, police officers stopped a car for failing to stop at a stop sign. While issuing a citation, the officer learned that the car was stolen and arrested both the driver and the defendant, a passenger. (*Id.* at pp. 567-568.) The *Williams* court held that the officers did not have

reasonable cause to believe the defendant had stolen the car. The court reasoned, “The record contains no evidence of any conversation between the officers and either occupant of the car concerning their occupancy of the vehicle excepting the officer’s request for the driver to present a registration of the vehicle. There is no evidence of any conversation whatever with defendant. There is no evidence the occupants of the car were even told why they were arrested. There is no evidence that the officer knew anything at all about the relationship between defendant and the driver of the car except that defendant was a passenger.” (*Id.* at p. 568.) The same is true here. Neither Herbert nor Roberts had a conversation with the minor before he was placed under arrest. And the record is devoid of any evidence of the relationship between the minor and the driver of the car. As in *Williams*, there is no evidence that the minor “was jointly engaged in any activity, legal or illegal, except as a passenger.” (*Id.* at p. 569; see also *In re Justin B.* (1999) 69 Cal.App.4th 879, 887.)

Because neither Herbert nor Roberts had probable cause to arrest the minor, Roberts could not lawfully search the minor’s pockets. (*People v. Valdez* (1987) 196 Cal.App.3d 799, 806 [officer may search an individual’s pockets if he has probable cause to arrest “*before the entry into the pocket.*”]) Accordingly, the court should have suppressed the evidence found as a result of the unlawful arrest, unless the search can be justified on other grounds, such as a lawful protective patsearch.

The minor contends the search of the minor cannot be justified as a patsearch for weapons. The People dismiss this issue as moot, because they contend the arrest was lawful. We disagree, as we have explained. On considering the merits of the issue, we conclude the search of minor’s pockets cannot be justified on the basis of a lawful protective patsearch for weapons.

A limited, protective patsearch for weapons is permissible if the officer has “reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. 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.” (*Terry v. Ohio* (1968) 392 U.S. 1, 27.) “ ‘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,’ the officer may conduct a patdown search ‘to determine whether the person is in fact carrying a weapon.’ [Citation.] ‘The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence. . . .’ ” (*Minnesota v. Dickerson* (1993) 508 U.S. 366, 373.)

Medina, supra, 110 Cal.App.4th at pp. 177-178 and *People v. Sandoval* (2008) 163 Cal.App.4th 205, 212, are instructive. In *Medina*, police officers stopped defendant for driving with a broken taillight. One officer patsearched the defendant because “he was in a ‘high-gang location.’ ” (*Medina, supra*, at pp. 174-175.) That officer “conceded that there ‘wasn’t anything specific’ about [the defendant] that would have led him to believe he was armed. Instead, [the officer] testified that it is ‘standard procedure’ to conduct weapons searches in a high gang area late at night.” (*Id.* at p. 177.) The *Medina* court held that the time of day and location — without more — were not enough to justify the patsearch. (*Id.* at p. 178.) In *Sandoval*, the court concluded that a patsearch was unlawful where the officer conducting the search “did not testify he thought defendant was armed and dangerous” and instead “testified he did not suspect defendant was engaged in criminal activity and . . . had no reason to believe defendant was armed.” (*Sandoval, supra*, 163 Cal.App.4th at p. 212.)

As in *Medina* and *Sandoval*, the patsearch here was unlawful because neither Herbert nor Roberts had a reasonable belief or suspicion that the minor was armed. At the motion to suppress hearing, Herbert testified that he and his colleagues conducted a high-risk stop because the car was stolen. He conceded that the minor was not holding a weapon and admitted that he did not suspect that the minor had committed a violent

crime. Roberts testified that he patsearched the minor because “we were conducting a high-risk stop where all the parties in the vehicle were being detained.” Roberts further testified that the minor obeyed Herbert’s commands and that he did not have a weapon “in view.” And as far as Roberts could discern, the minor did not have any bulges in his clothing. Notably, Roberts did not testify that the number of people in the car, in conjunction with the time and location of the stop, made him fear for his safety. “The touchstone for justifying a patdown search . . . is that the officer must have a reasonable belief or suspicion that the suspect is armed.” (*Sandoval, supra*, 163 Cal.App.4th at p. 213.) Neither Herbert’s testimony, nor Roberts’s unsubstantiated claim that he searched the minor for “officer safety,” constitutes specific and articulable facts that the minor was armed. As a result, the patsearch was unlawful.

Even assuming for the sake of argument that the patsearch was lawful, the scope of the search was not. “If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under *Terry*, and its fruits will be suppressed.” (*Dickerson, supra*, 508 U.S. at p. 373.) The search here clearly went beyond what was necessary to determine whether the minor was armed. Roberts testified that when he felt the outside of the minor’s clothing, he did not feel any weapons or anything that could be a weapon. Despite not feeling a weapon or anything that resembled a weapon, Roberts pulled items out of the minor’s pockets. Accordingly, the evidence found in the minor’s pockets should have been suppressed on this ground.

The Search of the Minor’s Jacket on October 27, 2007 Was Incident to a Lawful Arrest

The minor contends the search of his jacket on October 27, 2007 violated the Fourth Amendment. The minor concedes that the officers had probable cause to arrest him. He argues, however, that search of his jacket cannot be justified as incident to arrest because the jacket was not in his immediate control when McSorley searched it, and because he had “disassociated himself from the jacket.”

Pursuant to a lawful arrest, a police officer may conduct a contemporaneous warrantless search of the arrestee’s person and the area “ ‘within his immediate control’ ”— that is, “the area into which an arrestee might reach in order to grab a weapon or evidentiary items.” (*Chimel v. California* (1969) 395 U.S. 752, 763; *New York v. Belton* (1981) 453 U.S. 454.) “ ‘Such searches may be made whether or not there is probable cause to believe the arrestee may have a weapon or is about to destroy evidence. [Citation.] ‘The potential dangers lurking in all custodial arrests make warrantless searches of items within the ‘immediate control’ area reasonable without requiring the arresting officer to calculate the probability that weapons or destructible evidence may be involved. . . .’ ” (*In re Humberto O.* (2000) 80 Cal.App.4th 237, 243.)

Two cases, *People v. Summers* (1999) 73 Cal.App.4th 288 (*Summers*) and *People v. Rege* (2005) 130 Cal.App.4th 1584 (*Rege*), guide our analysis. In *Summers*, the defendant was sleeping in his trailer home when police officers entered with an arrest warrant. (*Summers, supra*, at p. 290.) The officers arrested the defendant and escorted him toward the door of the trailer. When the defendant was about 10 feet from the bed, another officer patted down the bed and found a sawed-off shotgun between the mattress and the headboard. (*Ibid.*) The *Summers* court held that the search was lawful because the police discovered the gun “within the immediate area of the still-being-removed arrestee, there was a female present who was not previously known to the officers, and there was another male roommate somewhere nearby whose presence away from the immediate premises had not yet been confirmed.” (*Ibid.*) As the court explained, “[t]his was a fluid situation in close quarters; and a court could properly find . . . that the circumstances justified reasonable precautions for the safety of everyone involved.” (*Id.* at p. 291.)

In *Rege*, the court reached a similar conclusion. (*Rege, supra*, 130 Cal.App.4th at p. 1589.) There, police officers received a tip that defendant was selling

methamphetamine in a motel room. They found the defendant in a 12-by-15 foot motel room and ordered her to get on the floor next to the bed. (*Id.* at pp. 1586-1587.) They handcuffed her and then searched the bed. The officers found a black pouch containing methamphetamine and drug paraphernalia approximately three feet from the defendant. (*Id.* at p. 1587.) The *Rege* court upheld the search. Citing Justice Bedsworth’s concurring opinion in *Summers*, the *Rege* court explained that the “proper focus” for determining whether a search is conducted pursuant to a lawful arrest “should be on the area into which the defendant could have grabbed at the time of his arrest, not the area that was under his [or her] immediate control at the time of the search.” (*Id.* at p. 1590.) Applying these principles, *Rege* held that “a valid search incident to arrest may take place even after the suspect has been arrested or immobilized” (*id.* at p. 1589) and concluded that the search was reasonable because it was “conducted within the area into which defendant could have reached at the time of her arrest,” it was reasonably contemporaneous with the arrest, and no intervening events rendered the search unreasonable. (*Id.* at p. 1590.)

The same is true here. The gun was in the pocket of the jacket the minor was wearing immediately before he was arrested. When McSorley arrested the minor, the jacket — and the gun — were “on the floor right next to where” the minor and the police officers were standing. And McSorley was only three feet from the minor when he searched the jacket and found the gun. Like the defendant in *Summers*, the minor was still being removed from the premises when McSorley searched the jacket. And as in *Summers*, the minor was not alone in the house: his mother was present. Although she had been cooperative, she was “not previously known to the officers.” Under *Summers* and *Rege*, the search of the minor’s jacket was lawful because it was conducted reasonably contemporaneously with the minor’s arrest and was limited to the area within his immediate control when he was arrested. (See also *In re Humberto O.*, *supra*, 80 Cal.App.4th at pp. 243-244 [upholding search of backpack the minor defendant was

wearing “at the time of arrest”; noting that the minor had access to the backpack both before and after he was handcuffed].)

Relying on *People v. Ingham* (1992) 5 Cal.App.4th 326, 332-333, the minor argues the search was unlawful because he had “disassociated himself from the jacket and thus it was no longer an extension of his person.” In *Ingham*, police officers arrested the defendant and picked up her purse, which “was in use by defendant and was located on the floor of the room where the arrest took place.” (*Id.* at p. 331.) The officers, however, did not search the purse until they arrived at the police station. (*Id.* at p. 330.) The *Ingham* court held that the search of the defendant’s purse could not be justified as incident to arrest because the search was not contemporaneous with her arrest and because the purse and the defendant were within the officers’ exclusive control. (*Id.* at p. 332.) The court also noted, however, that the search would have been lawful if the officers had searched the purse when they arrested the defendant. (*Id.* at p. 331.) Here, McSorley searched the minor’s jacket within moments of his arrest and just a few feet from him. As a result, *Ingham* is inapposite and the court properly denied the minor’s motion to suppress evidence seized during the October 27, 2007 incident.

DISPOSITION

The court’s November 30, 2007 jurisdictional order sustaining the charge that the minor received stolen property (§ 496, subd. (a)) is reversed. The dispositional order dated December 5, 2007, is reversed and remanded with directions to conduct a new dispositional hearing based on the sole finding that the minor possessed a firearm (§ 12021, subd. a)).

Jones, P.J.

We concur:

Needham, J.

Reardon, J.*

*Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.