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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

**In re JOSHUA H., a Person Coming Under
The Juvenile Court Law.**

THE PEOPLE,

Plaintiff and Respondent,

A107498

v.

**(Solano County
Super. Ct. No. J34505)**

JOSHUA H.,

Defendant and Appellant.

_____ /

Joshua H. appeals from a disposition entered after the juvenile court found true an allegation that he possessed a stun gun. (Pen. Code, § 12651, subd. (d).)¹ He contends the trial court erred when it denied his motion to suppress. We agree and will reverse the disposition.

I. FACTUAL AND PROCEDURAL BACKGROUND

On December 13, 2003, near 9:00 p.m., Suisun Police Officer Walter Walker was on patrol when he received a report that there had been a “physical disturbance with possible weapons” at a convenience store. Walker was familiar with the store in question. It is in a high-crime area and was the site of numerous complaints of drug

¹ All further section references will be to the Penal Code.

dealing. Walker went to the store. He saw “six to eight subjects” “hanging out” in the parking area. One of them was appellant.

Walker detained appellant and the others telling them to “have a seat.” While other officers watched them, Walker went inside the store. The clerk told appellant he had contacted the police at the request of one of the people outside the store who said that another person hit him with a gun.

Officer Walker returned outside and, based on a description provided by the clerk, identified the person who said he had been assaulted. The putative victim denied that he had been accosted and said he “wanted nothing done.” Walker doubted the victim’s denial because he had a fresh mark on his cheek. As a “precautionary measure” Walker decided to pat down all the “subjects.” During a search of appellant, Walker found a stun gun.

Based on these facts, a petition was filed alleging appellant had, inter alia, unlawfully possessed a stun gun. (§ 12651, subd. (d).) Appellant filed a motion to suppress. He argued his initial detention by Officer Walker was illegal. The trial court agreed appellant had been detained, but ruled the detention was justified; “it was brief, and I think it was justified given the circumstances surrounding the officer’s presence there. [¶] He had a report indicating a weapon, given the nature of the area, the time of day, given the fact there was some mark on the individual, although [he] denied any problem, it still gave credence to the nature of the report.”

Subsequently, the court found the allegation of the petition to be true, but ruled the offense to be an infraction. At disposition, the court placed appellant on informal probation for six months in the custody of his father.

II. DISCUSSION

Appellant contends the trial court erred when it denied his motion to suppress.

The standard of review we apply is settled. “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 which are supported by substantial evidence and independently determine whether

the facts support the court's legal conclusions. [Citation.]" (*In re Joseph G.* (1995) 32 Cal.App.4th 1735, 1738-1739.)

Here, appellant contends, and the People do not dispute, that Officer Walker detained appellant when he first arrived at the store. The question is whether that detention was justified.

A detention is constitutionally reasonable if the circumstances known or apparent to the detaining officer include "specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity. . . . [T]he facts must be such as would cause any reasonable police officer in a like position, drawing when appropriate on his training and experience [citation], to suspect the same criminal activity and the same involvement by the person in question." (*In re Tony C.* (1978) 21 Cal.3d 888, 893, fn. omitted; see also *People v. Daugherty* (1996) 50 Cal.App.4th 275, 285.)

In this case, appellant contends his detention was improper because it was based on what he describes on an "anonymous tip." According to appellant, such a tip could not support his detention under *Florida v. J.L.* (2000) 529 U.S. 266 and its progeny.

We question whether Officer Walker was acting on the basis of an anonymous tip. The record shows the store clerk called the police to report a crime that had been reported to him by the victim of that crime. Given that the clerk freely admitted to Officer Walker that he was the source of the call, it is likely the clerk also identified himself when he made the initial telephone report. Construing the record in the light most favorable to the trial court's ruling, it would be difficult to characterize the clerk's report as "anonymous."

In any event, the point is not pivotal because the second requirement for a detention has not been established. Officer Walker simply did not possess specific and articulable facts that would support the conclusion that *appellant* was involved in the crime that had been reported. The record shows that Officer Walker had very little information when he arrived at the convenience store. He knew only that a "physical disturbance with possible weapons" had been reported. The report did not describe the

number of persons involved, nor did it provide a description of the participants. Indeed, the report did not even indicate when the disturbance was alleged to have occurred. This is a serious omission given that convenience stores are commonly the site of constant in and out traffic. We conclude Officer Walker could not detain appellant simply because he was standing outside a store where a disturbance had been reported. The trial court erred when it denied the motion to suppress.

The People contend the trial court ruled correctly. They base their argument not on California or federal case law, but on a passage from Professor LaFave's Search and Seizure treatise. According to Professor LaFave, it is sometimes permissible to detain more than one person near the scene of a crime to allow the police time to determine if any of the person's detained are involved. (See 4 LaFave, Search and Seizure (4th ed. 2004) § 9.5(g), p. 550 (hereafter LaFave).)

However, even under Professor LaFave's analysis, appellant's detention would not be justified. Professor LaFave describes six factors that should be evaluated when determining whether the type of detention he describes is valid. First is the "particularity of the description of the offender." (LaFave, *supra*, at p. 550.) Here, Officer Walker did not have any description of the offender prior to the point when he detained appellant. Second is the "size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred." (*Id.* at pp. 550-551.) Here, the record does not disclose when the crime occurred so there was no way to determine whether the possible suspect might still be located nearby. Indeed, since the crime was committed at a convenience store where comings and goings are common, it would not be unusual for someone to be present at the time of Officer Walker's response who was not there when the crime occurred. Third is the "number of persons about in that area." (*Id.* at p. 551.) Here, the number was described as "six to eight." While that is not a particularly large number, it is not small either. This factor is neutral at best. Fourth is the "known or probable direction of the offender's flight." (*Ibid.*) Here, the offender was not described, nor was his or her flight, if any. Fifth is the "observed activity by the particular person stopped." (*Ibid.*) Here, Officer Walker testified that appellant did nothing unusual on the

night in question. He was cooperative at all times. Sixth is the “knowledge or suspicion that the person . . . stopped has been involved in other criminality of the type presently under investigation.” (*Ibid.*) Here, Officer Walker stated he had “dealings” with appellant previously. However, he did not describe the nature of those “dealings.” Nothing in the record supports the conclusion that appellant had been involved in a similar “physical altercation” previously.

In sum, even under the analysis offered by Professor LaFave, appellant’s detention was not justified. We conclude the trial court erred when it denied appellant’s motion to suppress.

III. DISPOSITION

The disposition is reversed. The trial court is ordered to enter a new order granting the motion to suppress.

Jones, P.J.

We concur:

Stevens, J.

Gemello, J.