Filed 10/5/11 In re Alfredo C. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Alfredo C., a Person Coming Under the Juvenile Court Law.	B225715 (Los Angeles County Super. Ct. No. FJ47092)
THE PEOPLE, Plaintiff and Respondent, v. Alfredo C., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Cynthia Loo, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Bruce G. Finebaum, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Scott A. Taryle and Tannaz Kouhpainezhad, Deputy Attorneys General, for Plaintiff and Respondent.

Following the denial of his motion to suppress evidence, Alfredo C. admitted he had possessed a short-barreled shotgun in violation of Penal Code section 12020, subdivision (a)(1). Alfredo was declared a ward of the court and ordered home on probation. On appeal, he contends the photographs found on a digital camera recovered from his person following his arrest should have been suppressed as the fruit of an unlawful search.[1] We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The facts elicited at the suppression hearing are not in dispute. Deputy Diane DeLeon of the Los Angeles County Sheriff's Department was on duty with her partner, Deputy Sanchez, in a marked patrol car on March 21, 2010. DeLeon could smell fresh gold paint on some graffiti that she and Sanchez came upon in an alley. At about the same time, the deputies received a radio dispatch that vandalism had occurred in the area and two male Hispanics wearing blue jerseys were seen running away. A second dispatch reported that two suspects had been detained nearby.

Deputy DeLeon and her partner arrived where the suspects, Alfredo and another minor, were being detained by other deputies. Alfredo was standing on the sidewalk and his companion was seated inside a patrol car. DeLeon conducted a pat search of Alfredo, retrieved an iPod from his pants pocket, and placed him in the patrol car. She then spoke with the other minor, who had gold paint on his hands and shirt. The minor admitted that he was in a tagging crew, went by the moniker "Dopes" and he and Alfredo had spray-painted the alley. DeLeon noticed gold paint on Alfredo's hands and clothing. He admitted that his moniker was "Zenick." Following his arrest, Alfredo was advised of his

---

[1] The minute order of the disposition hearing reads Alfredo C. "may not be held in physical confinement for a period to exceed 3 years." However, Alfredo C. asserts and the People acknowledge, the juvenile court never orally pronounced a maximum period of confinement, and was not required to do so by statute. (*In re Ali A.* (2006) 139 Cal.App.4th 569, 573. In view of this discrepancy, the disposition minute order shall be modified to reflect the oral pronouncement of judgment. (*People v. Mesa* (1975) 14 Cal.3d 466, 471; *People v. Zackery* (2007) 147 Cal.App.4th 380, 385-386.)

Miranda rights,[2] which he waived, and admitted belonging to a tagging crew and spray-painting the alley. DeLeon searched Alfredo again and recovered a digital camera, which contained several photographs of Alfredo holding a sawed-off shotgun.

DISCUSSION

1. *Standard of Review*

In reviewing the ruling on a motion to suppress, the appellate court defers to the trial court's factual findings, express or implied, when supported by substantial evidence. (*People v. Hoyos* (2007) 41 Cal.4th 872, 891; *People v. Ayala* (2000) 23 Cal.4th 225, 255; *People v. James* (1977) 19 Cal.3d 99, 107.) The power to judge credibility, weigh evidence and draw factual inferences is vested in the trial court. (*James*, *supra*, at p. 107.) However, in determining whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment.[3] (*Hoyos*, *supra*, at p. 891; *People v. Ramos* (2004) 34 Cal.4th 494, 505.)

2. *The search of the camera incident to Alfredo's arrest was lawful*

Alfredo does not dispute the validity of his arrest as based on probable cause. Nor does he challenge the deputy's search of his person incident to his arrest. (*Gustafson v. Florida* (1973) 414 U.S. 260, 263-266 [94 S.Ct. 488, 38 L.Ed.2d 456; *United States v. Robinson* (1973) 414 U.S. 218, 225-236 [94 S.Ct. 467, 38 L.Ed.2d 427] [a lawful arrest, in which the defendant is taken into custody, gives the arresting officer the right to search the defendant for weapons or evidence at the scene]; *Chimel v. California* (1969) 395 U.S. 752, 763 [89 S.Ct. 2034, 23 L.Ed.2d 685] [arresting officer also has the right to search the area within the lunging distance of the arrestee – that is, "the area from within which he might gain possession of a weapon or destructible evidence"].) Rather, Alfredo argues that once the camera was recovered during the search, and was no longer in his

---

[2] *Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694].

[3] Whether relevant evidence obtained by assertedly unlawful means must be excluded is determined exclusively by deciding whether its suppression is mandated by the federal Constitution. (Cal. Const., art. I, § 28; *In re Randy G.* (2001) 26 Cal.4th 556, 561-562; *In re Lance W.* (1985) 37 Cal.3d 873, 885-890.)

exclusive control or in an area where he could regain control of it, the camera was not lawfully subject to a warrantless search pursuant to *Arizona v. Gant* (2009) 556 U.S. 332 [129 S.Ct. 1710; 173 L.Ed.2d 485] (*Gant*).

In *Gant*, the defendant was arrested for driving on a suspended license, handcuffed, and locked in a patrol car before officers searched his car and found cocaine in a jacket pocket. (*Gant, supra*, [129 S.Ct. at p. 1714].) Concluding the scope of the officers' search was unreasonable, the Supreme Court concluded a lawful custodial arrest supports a search of a vehicle occupied or recently occupied by the arrestee only "when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search" or "when it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" (*Id.* at p. 1719].)

Alfredo relies on *Gant*'s conclusion that the expanded authority to conduct a warrantless search, while "it does not follow from *Chimel*," is nonetheless justified based on "circumstances unique to the vehicle context" (*Gant, supra*, at p. 1719) to argue that the search of the digital camera was unreasonable as not incident to Alfredo's arrest in a car.

However, in *People v. Diaz* (2011) 51 Cal.4th 84 (*Diaz*), which was decided after Alfredo filed his opening brief, the California Supreme Court upheld the warrantless search of a text message folder of a cell phone taken from a defendant's person following his arrest 90 minutes earlier for selling a controlled substance. The defendant argued the search was unlawful as too remote in time and place to constitute a lawful search incident to arrest. (*Id*. at p. 91.)

The *Diaz* Court distinguished *Gant* as "not otherwise relevant here, as it involved a search of the area within an arrestee's immediate control, not of the arrestee's person." (*Diaz, supra*, 51 Cal.4th at p. 96, fn. 9.) The *Diaz* Court then reviewed three United States Supreme Court decisions, which it found pertinent: *United States v. Robinson*, *supra,* 414 U.S. 218 [94 S.Ct. 467, 38 L.Ed.2d 427], in which an officer lawfully found heroin inside a cigarette package he had removed from a defendant's person; *United States v. Edwards* (1974) 415 U.S. 800 [94 S.Ct. 1234, 39 L.Ed.2d 771], in which an

officer had a defendant remove his clothing so the officer could search it for paint chips 10 hours after arresting the defendant for attempting to break into a post office; and *United States v. Chadwick* (1977) 433 U.S. 1 [97 S.Ct. 2476, 53 L.Ed.2d 538], in which officers unlawfully conducted a warrantless search of a 200-pound footlocker they had seized 90 minutes after the defendants' arrest. (*Diaz, supra*, 51 Cal.4th at pp. 91-93.) The *Diaz* Court determined that in view of these three decisions, the lawfulness of the search of the cell phone in the present case turned on whether it was the defendant's "'personal property . . . immediately associated with [his] person" [citation] like the cigarette package in *Robinson* and the clothes in *Edwards.* If it was, then the delayed warrantless search was a valid search incident to [the] defendant's lawful custodial arrest. If it was not, then the search, because it was '"remote in time [and] place from the arrest,'" "cannot be justified as incident to that arrest" unless an 'exigency exist[ed].' (*Chadwick, supra,* at p. 15.)" (*Diaz, supra,* 51 Cal.4th at p. 93.) The *Diaz* Court then held the cell phone was immediately associated with the defendant's person and its warrantless search was therefore "valid because of 'reduced expectations of privacy caused by the arrest.'" (*Id.* at p. 94.) In reaching this conclusion, the *Diaz* Court noted that "[n]othing in [the *Robinson, Edwards* and *Chadwick*] decisions even hints that whether a warrant is necessary for a search of an item properly seized from an arrestee's person incident to a lawful custodial arrest depends in any way on the character of the seized item." (*Diaz, supra*, at p. 95.)

As in *Diaz*, *Gant* is inapplicable here because the search incident was of Alfredo's person. Furthermore, like the cell phone in *Diaz*, the digital camera in this case was immediately associated with Alfredo's person when it was discovered during a valid search incident to arrest. The juvenile court properly denied the motion to suppress.

DISPOSITION

The three-year maximum period of confinement set forth in the May 20, 2010 minute order is ordered stricken. In all other respects, the order is affirmed.

ZELON, J.

We concur:

PERLUSS, P.J.

JACKSON, J.