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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. JUAN RIVERA, Defendant and Appellant.	D044103 (Super. Ct. No. SCN172974)

APPEAL from a judgment of the Superior Court of San Diego County, Harry M. Elias and Timothy M. Casserly, Judges. Reversed.

After the trial court denied a motion to suppress evidence (Pen. Code, § 1538.5), Juan Rivera entered a negotiated guilty plea to carrying a concealed dirk or dagger (Pen. Code, § 12020, subd. (a)(4)). The court sentenced him to prison for the two-year middle term. Rivera contends the trial court erred in denying his motion to suppress.

FACTS

On January 20, 2004, Oceanside Police Officer Hunter received a radio call that Rivera, who had an outstanding arrest warrant, was at a residence in Oceanside. Officer Hunter went to the address, obtained consent from the owner to search the residence and found Rivera sitting in a shed behind the house. Rivera identified himself and told Officer Hunter he had a knife under his clothing. Officer Hunter arrested him.

DISCUSSION

Rivera argues the evidence should have been suppressed because Officer Hunter detained him based on an anonymous tip without verifying that a warrant existed and without sufficient corroboration of the information from the tipster. We agree.

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) However, a correct decision of the trial court must be affirmed on appeal even if it is based on erroneous reasons. (*People v. Hobbs* (1987) 192 Cal.App.3d 959, 963.)

Here, when the trial court denied the motion to suppress, it stated:

> "I'll find the existence of valid warrants different than a Fourth [Amendment] waiver. The existence of a valid warrant in my mind in effect takes the Fourth Amendment out, and I find distinguishable from [*Florida v. J.L.* (2000)] 529 U.S. 266 . . . . So I'll deny the [Penal Code section] 1538.5 [motion], but I think I've narrowed it as much as could I for purposes of appeal."

This was error. The existence of an arrest warrant that was not verified by the arresting officer did not justify the arrest. (See *People v. Sanders* (2003) 31 Cal.4th 318, 331-332) [parole search condition does not validate warrantless search of parolee when police are not aware of search condition at time of search].)

Thus, the question becomes whether the police were entitled to detain Rivera based on the information from the tipster. The officers had an uncorroborated anonymous tip that Rivera was at a certain address and a probation violation warrant had been issued for his arrest. A detention based on an uncorroborated anonymous tip violates the Fourteenth Amendment. (*Florida v. J.L.* (2000) 529 U.S. 266, 270.) In *Florida v. J.L.*, an anonymous tipster informed police over the telephone that "a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." (*Id.* at p. 268.) Quoting *Alabama v. White* (1990) 496 U.S. 325, ,327, 329, the United States Supreme Court in *Florida v. J.L.*, *supra*, 529 U.S. at page 270, recognized that unlike a tip from a known informant whose veracity can be assessed,

> " 'an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity,' [citation]. As we have recognized, however, there are situations in which an anonymous tip, suitably corroborated, exhibits 'sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop.' [Citation.] The question we here confront is whether the tip pointing to J. L. had those indicia of reliability."

Thus, before officers can lawfully search or seize the subject of an anonymous tip, the tip must be corroborated by other evidence. "Corroboration of an anonymous tip can take several forms. For example, '"[e]ven observations of seemingly innocent activity provide sufficient corroboration if the anonymous tip casts the activity in a suspicious

light. . . ."' [Citations.] Similarly, '[w]hile a person cannot be detained for mere presence in a high crime area without more [citations], this setting is a factor that can lend meaning to the person's behavior. [Citations.]' [Citation.] Other forms of corroboration include the verification of detail provided by the informant through the officer's observations. Some information is so detailed as to be self-verifying, and in some cases verification from other sources can be achieved. [Citation.]" (*People v. Ramirez* (1996) 41 Cal.App.4th 1608, 1616-1617.)

The Attorney General argues the information was so detailed as to be self-verifying. Specifically, the Attorney General relies on the information that Rivera could be located in a shed at a private residence, a place not readily observable to the general public. The Attorney General asserts "[t]he detail provided by the tipster lends itself to the reasonable inference that the tipster had visited the Ortega residence or corresponded directly with Ortega that day; the information contained in the tip was self-verifying."

The problem with this argument, as the Attorney General implicitly concedes, is that no evidence was presented at the hearing that the anonymous tipster had stated there was a shed in the backyard of the Ortega residence or that Rivera could be found in the shed. Nor was there any evidence that the shed was not readily observable by the general public. Thus, the foundation of the Attorney General's argument — that the information in the tip was self-verifying — is unsupported by the record.

The dissent's conclusion the police engaged in a consensual encounter with Rivera is based on narrowly focusing on only the contact between the police and Rivera once he was located, rather than on whether the initial contact at the residence and search for

Rivera was justified by the uncorroborated anonymous tip. The dissent fails to recognize that but for the uncorroborated anonymous tip, the police would never have encountered Rivera at the shed located on private property. Nor do the cases cited by the dissent support its position.

The dissent's reliance on *People v. Hughes* (2002) 27 Cal.4th 287 (*Hughes*) is misplaced. *Hughes* held the police may approach a person who was walking by a crime scene, engage in a nonaccusatory, routine, and brief conversation and continue to talk to the individual when the individual consents to further conversation. *Hughes* does not stand for the proposition that a consensual encounter occurs when the police, relying on an uncorroborated anonymous tip, obtain entry into a private residence to search for a specific individual so they may arrest him for a parole violation and while searching the residence and its grounds encounter that individual. Whether a consensual encounter or detention occurred here requires examination of all the circumstances leading to the contact between the police and the individual and is not limited, as the dissent suggests, to questions posed to the individual once he is located.

Similarly misplaced is the dissent's reliance on *Muehler v. Mena* (2005) ___ U.S. ___ [125 S.Ct. 1465] (*Muehler*). In *Muehler*, the Supreme Court held when the police are executing a search warrant for weapons they may detain all individuals who happen to be in the residence and may ask those individuals questions about their identity and immigration status while they are being detained. *Muehler* does not stand for the proposition that the police may enter a residence to conduct a search for a particular individual based on an uncorroborated anonymous tip.

The trial court erred in denying the motion to suppress evidence since the existent warrant was unverified and there was no evidence corroborating the anonymous tip.

DISPOSITION

The judgment is reversed.

McCONNELL, P. J.

I CONCUR:

O'ROURKE, J.

NARES, J., dissenting:

I respectfully dissent.

As the majority recites, Oceanside Police Officer Hunter testified that he went to a residence in Oceanside in response to a radio call that a person named Juan Rivera, who had a possible parole violation warrant, was at the residence. That information came from an anonymous tip. When Officer Hunter arrived at the residence, the owner gave him permission to search the residence. Hunter and another officer went into the backyard and saw a shed with an open doorway. Officer Hunter could see a man sitting in the shed. Officer Hunter asked his name and the man responded that he was Juan Rivera. Officer Hunter then asked if he had any weapons, and Rivera volunteered something to the effect of "yes, I have a knife under my shirt and pants." Officer Hunter asked Rivera to step out of the shed and lie on the ground. Rivera was handcuffed and Officer Hunter searched his person, finding a large knife with a nine-and-one-half-inch blade under his shirt and in his pants.

In the course of identifying Rivera, Officer Hunter also ran his name through dispatch and confirmed that he had an outstanding felony parole warrant. Additionally during this time period, a gang detective who had previous contacts with Rivera arrived and corroborated the identification of Rivera.

From this set of facts the majority concludes that Rivera's motion to suppress should have been granted because his detention was based on an uncorroborated, anonymous tip, without any verification that a warrant existed. However, I believe that the majority errs, because it ignores a critical fact: when the detention occurred.

"'For purposes of Fourth Amendment analysis, there are basically three different categories or levels of police "contacts" or "interactions" with individuals, ranging from the least to the most intrusive. First, there are . . . "consensual encounters" . . . , which are those police-individual interactions which result in no restraint of an individual's liberty whatsoever—i.e., no "seizure," however minimal—and which may properly be initiated by police officers even if they lack any "objective justification." . . . Second, there are what are commonly termed "detentions," seizures of an individual which are strictly limited in duration, scope and purpose, and which may be undertaken by the police "if there is an articulable suspicion that a person has committed or is about to commit a crime." . . . Third, and finally, there are those seizures of an individual which exceed the permissible limits of a detention, seizures which include formal arrests and restraints on an individual's liberty which are comparable to an arrest, and which are constitutionally permissible only if the police have probable cause to arrest the individual for a crime.' " (*In re James D.* (1987) 43 Cal.3d 903, 911-912, citations omitted.)

In *Florida v. Royer* (1983) 460 U.S. 491, 497-498, the United States Supreme Court explained what type of police interactions with citizens are consensual and do not violate an individual's Fourth Amendment rights: "[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions. [Citations.] Nor would the fact that the officer identifies himself as a police officer, without more, convert the encounter into

a seizure requiring some level of objective justification. [Citation.] The person approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way. [Citations.] He may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds. [Citation.] If there is no detention—no seizure within the meaning of the Fourth Amendment—then no constitutional rights have been infringed."

Factors relevant to the question of whether an individual has been detained include whether there was a disproportionate and threatening number of officers present, whether the officers displayed weapons, whether the officers touched or physically restrained the person, and whether an officer's language or tone of voice indicated that compliance with the officer's request might be compelled. (*United States v. Mendenhall* (1980) 446 U.S. 544, 554.) Absent some objective indication of detention, the court will find the encounter to have been consensual. (*Id.* at p. 555.)

For example, in *People v. Hughes* (2002) 27 Cal.4th 287, the California Supreme Court concluded that a stop was not a detention where an officer approached the defendant as he walked by the crime scene, asked the defendant whether he could help the officers investigating the crime, and asked the defendant basic questions regarding the crime. The court also concluded that the summoning of a second officer, the officers' request to test the defendant's jacket for traces of blood, and taking the defendant to the police station in handcuffs on the grounds of officer safety did not substantially change the volitional nature of the encounter where the record showed the defendant freely

consented to each of these acts. (*Id.* at pp. 328-329.) In *People v. Bouser* (1994) 26 Cal.App.4th 1280, 1282, 1284, it was held that no detention occurred where a police officer parked his car, got out, walked up to the defendant and asked to talk to him, obtained identifying information, asked the defendant what he was doing at the location, and ran a warrants check.

It also does not matter if the questioning occurred in a residence as opposed to a public space. In *Muehler v. Mena* (2005) ___ U.S. ___ [125 S.Ct. 1465], the plaintiff brought an action under title 42 United States Code section 1983 against police officers alleging they violated her Fourth Amendment rights by detaining her in handcuffs in her garage for two to three hours during a search for weapons and evidence of gang membership. After a jury trial, a verdict was rendered in favor of the plaintiff. The Ninth Circuit Court of Appeals affirmed, holding (1) it was unreasonable to detain her in the garage in handcuffs during the search; and (2) her Fourth Amendment rights were separately violated by officers' questioning her about her about her immigration status without any reasonable suspicion. (*Muehler*, *supra*, 125 S.Ct. at pp. 1469, 1471.) The Supreme Court first held that the detention in the garage was reasonable. (*Id.* at pp. 1470-1471.) The high court also concluded that there was no separate Fourth Amendment violation in the questioning because it did not amount to a detention: "We have 'held repeatedly that mere police questioning does not constitute a seizure.' [Citations.] '[E]ven when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual; ask to examine the individual's

identification; and request consent to search his or her luggage.' [Citation.]" (*Id.* at p. 1471.)

In this case, at the police officers' request, they were given permission to search the residence where the anonymous tipster indicated Rivera was located. Even assuming that they had no reasonable suspicion for a detention at that point, this "knock and talk" procedure, seeking permission to search a residence, does not run afoul of the Fourth Amendment. (*People v. Jenkins* (2004) 119 Cal.App.4th 368, 372.) As they searched the backyard, they observed a man sitting in a shed. Officer Hunter asked whether he was Rivera, and Rivera volunteered that he was. Officer Hunter then asked if Rivera had a weapon, in response to which Rivera again voluntarily disclosed that he had a concealed weapon on his person. Up to this point, the interaction was consensual and no detention had occurred. Officer Hunter was free to ask Rivera questions, and Rivera was free to reply, if he wished. There was not a large number of officers present, there was no evidence the officers involved acted in a threatening manner, they did not touch or physically restrain Rivera, and no evidence was presented that the officers' language or tone of voice indicated that Rivera's compliance with the officers' requests might be compelled. In short, up to that point, there is no objective indication of a detention, and the interaction was consensual. (*United States v. Mendenhall, supra,* 446 U.S. at p. 555.)

On cross-examination, Officer Hunter did testify that until he determined whether the individual he contacted was Rivera, he was not going to let him leave. However, that fact does not change the analysis as the officer's uncommunicated state of mind is

irrelevant in assessing whether there has been a detention. (*In re Manuel G.* (1997) 16 Cal.4th 805, 821.)

After Rivera voluntarily disclosed that he had a knife hidden on his person, it was reasonable for the officers to detain him, because he volunteered that he had a concealed weapon, giving the officers a reasonable basis to conclude that he was in violation of Penal Code section 12020, subdivision (a)(4),[1] the section under which he was eventually charged. It was also reasonable under those circumstances to detain and handcuff Bates for the officers' safety. (*People v. Wright* (1988) 206 Cal.App.3d 1107, 1112.) Thus the detention, which began when Officer Hunter ordered Rivera to the ground and handcuffed him, was reasonable and did not violate Rivera's Fourth Amendment rights.

NARES, J.

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1 Section 12020, subdivision (a)(4) provides: "(a) Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison: [¶] . . . [¶] (4) Carries concealed upon his or her person any dirk or dagger."