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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re A.L., a Person Coming Under the Juvenile Court Law.	C092566
THE PEOPLE, Plaintiff and Respondent, v. A.L., Defendant and Appellant.	(Super. Ct. No. JV140827)

After a robbery involving a firearm and an investigatory stop of a vehicle driven by minor A.L., officers searched the vehicle and found a loaded handgun under the driver seat. Minor moved to suppress the seized evidence, but the juvenile court denied the motion. The parties agreed to a negotiated disposition in which minor admitted he had

carried a concealed weapon in a motor vehicle. Minor was adjudged a ward of the juvenile court and placed on probation.

Minor now contends the initial stop was unlawful as the officer did not have a reasonable basis to stop him; the subsequent search of the car went beyond the scope of the detention; and his consent to search was not voluntary, as it was given without benefit of *Miranda*[1] warnings and the detention had become an unlawful de facto arrest.

We requested supplemental briefing on whether the evidence was admissible under the doctrine of inevitable discovery and whether the factual basis for applying the inevitable discovery doctrine was fully developed in the juvenile court. Having considered the briefing, argument and record in this case, we conclude the initial investigatory stop was lawful and no *Miranda* warnings were necessary prior to seeking consent. Although the detention became a de facto arrest, the firearm would have inevitably been discovered and the factual basis for applying the inevitable discovery doctrine was fully developed in the juvenile court. Accordingly, the motion to suppress was properly denied, and we will affirm the juvenile court's orders.

BACKGROUND

City of Citrus Heights Police Officer Ricardo Ramirez was on patrol in the area of Greenback Lane and San Juan Avenue just after midnight. He had been assigned to an area that had many reports of robbery, burglary, and theft.

Officer Ramirez saw a male adult wearing all black clothing and a black backpack sprint across the street outside of a crosswalk. The person jumped into the passenger seat of a running vehicle and the car drove through a parking lot at higher than normal speed. Minor was the driver of the car.

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

Based on his training and experience, Officer Ramirez thought it was significant that the person was running outside a crosswalk, wearing all black, and carrying a backpack. Most of the businesses in the area were closed. Officer Ramirez believed a crime had been committed and initiated an investigatory stop. Because there were two people in the stopped vehicle, Officer Ramirez was alone, and the totality of the circumstances had not yet been established, Officer Ramirez had safety concerns. He directed the occupants of the vehicle to put their hands in the air; minor placed his hands in the air, but the passenger made "furtive movements to his waistband." Based on his training and experience, Officer Ramirez believed the passenger might be accessing a weapon. Officer Ramirez detained the occupants of the car at gunpoint and radioed for assistance. Within minutes, approximately five additional officers arrived at the scene.

Although the passenger did not initially comply with commands to put his hands on top of his head and get out of the car, he was ultimately removed from the car, detained with a twist lock, and placed in the back of a patrol car. The patrol car was approximately six feet away from the car minor had been driving. Minor complied with commands to step out of the vehicle. He was detained in handcuffs and placed in a separate patrol vehicle approximately 15 feet away.

Officer Ramirez conducted a preliminary investigation with minor to determine whether a crime had been committed. Minor was handcuffed in the back of the patrol car with the door open. Officer Ramirez's gun was not drawn but in his holster. Officer Ramirez was the only officer speaking to minor. Officer Ramirez did not give minor *Miranda* warnings. Officer Ramirez asked minor questions regarding ownership of the car. Officer Ramirez attempted to contact minor's mother, the registered owner of the vehicle, but could not reach her. He asked minor for consent to search the car, and minor gave consent. Officer Ramirez also spoke with J.L., minor's brother and the passenger in the stopped vehicle, and obtained his consent to search the car.

During that time, a person named Martin S. drove up to the scene. Martin told Officer Ramirez he had been robbed at gunpoint behind the Donut King business. Martin had been parked at the Donut King while his wife bought donuts. A person wearing all black and a black mask and carrying a black backpack tapped a gun on his window and demanded everything he had. The Donut King where Martin was robbed was approximately 100 yards from where the officers detained the brothers. Martin's description of the person matched J.L., the person Officer Ramirez had seen running across the street. Martin told Officer Ramirez his phone had been taken and he came to the scene because he was tracking his phone through a locator application. Officer Ramirez dialed Martin's cell phone number. As Officer Ramirez heard his phone dial tone ringing, the officers at the vehicle (approximately 25 yards away) informed Officer Ramirez a cell phone was ringing in the car. The officers searching the car found the cell phone. The officers also found a black mask in the car. Martin identified J.L. as the person who robbed him, based on his clothing and demeanor.

Officer Ramirez testified his conversation with Martin occurred before the search of the car. He later testified he was taking Martin's statements as the officers were preparing to search the vehicle and that he called Martin's cell phone as the search took place. Citrus Heights Police Officer Nicholas Morgan participated in the search of the vehicle. He started on the driver's side, and as soon as he pushed back the seat found a loaded firearm. After he secured the firearm, he searched the passenger side and found a ringing cell phone under the passenger seat. Officers secured the cell phone and returned it to Martin.

When Officer Ramirez learned a firearm was found, he gave minor *Miranda* warnings and interviewed him. The officers placed the brothers under arrest, transported them to juvenile hall, and towed the vehicle.

The district attorney's office filed a Welfare and Institutions Code section 602 petition, alleging robbery (Pen. Code, § 211)[2] with a firearm enhancement allegation (§ 12022, subd. (a)).

Minor moved to suppress the evidence seized -- among other things, the gun and ammunition in it, and the cell phone, backpack, and ski mask. The juvenile court found there was reasonable suspicion based on articulable facts for the stop. Specifically, early in the morning, in an area associated with crime, the officer saw a person sprinting across the street outside a crosswalk in violation of the Vehicle Code. The person ran to a vehicle, jumped in, and the car sped off. The juvenile court found those facts sufficient to justify the initial stop. As to the detention, the juvenile court found minor was detained when he was handcuffed and placed in the patrol car. The juvenile court concluded J.L.'s refusal to comply with orders and his furtive movements justified ordering the brothers out of the vehicle, and J.L.'s conduct raised additional suspicion of criminal activity or a threat to officer safety. Accordingly, the juvenile court found the detention was reasonable. The juvenile court found minor and J.L. each consented to the search and there did not appear to be any confusion regarding the consent. In addition, based on the totality of the circumstances, officer safety concerns justified a search of the vehicle looking for weapons. Moreover, when the victim appeared at the scene, provided the information about the cell phone, and the phone rang in the car, there was a reasonable basis for the search, as it was an indication a crime had been committed and evidence of the crime was in the car. Under the totality of the circumstances, the juvenile court found the search and the arrest were valid. Accordingly, the juvenile court denied the motion to suppress.

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[2] Undesignated statutory references are to the Penal Code.

The People filed an amended Welfare and Institutions Code section 602 petition, alleging robbery (§ 211) with a firearm enhancement allegation (§ 12022, subd. (a)), carrying a concealed firearm in a motor vehicle (§ 25400, subd. (a)(1)), and harboring a felon (§ 32). The parties agreed to a negotiated disposition in which minor admitted he had carried a concealed weapon in a motor vehicle. The remaining allegations were dismissed in the interest of justice. The maximum period of confinement was calculated at three years. Minor was adjudged a ward of the court, placed on probation, and ordered to complete 45 days of electronic monitoring.

DISCUSSION

Minor contends the initial stop and the search leading to the gun was invalid and the result of a number of Fourth Amendment violations. He argues the officer did not detain J.L. as a result of the jaywalking Vehicle Code violation and did not have a basis to conduct a traffic stop. He claims the search of the car went beyond the scope of the detention and, to the extent the search was conducted incident to arrest or pursuant to minor's consent, it was invalid. Minor also argues the failure to provide *Miranda* warnings before seeking his consent to search rendered the consent involuntary. Accordingly, minor argues the juvenile court should have excluded the evidence found in the car.

We requested supplemental briefing from the parties on the applicability of the inevitable discovery doctrine, in particular if the officers would have lawfully searched the vehicle after the victim of the robbery appeared at the scene. In response, minor contends the record does not contain sufficient evidence for application of the doctrine and he would have sought additional evidence on the topic.

In reviewing the denial of a suppression motion, we defer to the juvenile court's express or implied factual findings if supported by substantial evidence, but exercise our independent judgment to determine whether, on the facts found, the search or seizure was

reasonable under the Fourth Amendment. (*People v. Camacho* (2000) 23 Cal.4th 824, 830.)

A

"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 (*Souza*).) To "justify an investigative stop or detention the circumstances known or apparent to the officer must 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." (*In re Tony C.* (1978) 21 Cal.3d 888, 893.) "An ordinary traffic stop is treated as an investigatory detention, i.e., a '*Terry*[**3**] stop.' [Citation.] A *Terry* stop is justified if it is based on at least reasonable suspicion that the individual has violated the Vehicle Code or some other law. [Citation.]" (*In re H.M.* (2008) 167 Cal.App.4th 136, 142; see *People v. Durazo* (2004) 124 Cal.App.4th 728, 734; see also *People v. Superior Court (Brown)* (1980) 111 Cal.App.3d 948, 954 [where officer saw pedestrian commit traffic violation, officer had right and duty to detain and cite].) Jaywalking constitutes a traffic violation for which an individual can lawfully be stopped. (*In re H.M.*, at p. 142.) In addition, "[a]n area's reputation for criminal activity" and the time of night or day are appropriate considerations in assessing the reasonableness of a detention. (*Souza,* at p. 240; see *id.* at pp. 240-241.) " 'The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the

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3 *Terry v. Ohio* (1968) 392 U.S. 1 [20 L.Ed.2d 889].

principal function of [police] investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal . . . .' " (*Id*. at p. 233.)

Officer Ramirez was patrolling an area known by him and known generally for criminal activity, including burglaries, robberies, and numerous petty thefts. It was after midnight and all but one of the nearby businesses were closed when Officer Ramirez saw J.L., dressed in all black and carrying a backpack, sprint across the street outside of a crosswalk. After midnight is both a late and an unusual hour for anyone to be running between two business areas when all but one of the businesses are closed. (See *Souza*, *supra*, 9 Cal.4th at p. 241.) J.L. jumped into a waiting, running car, and the car departed at an unusually fast speed. The totality of the circumstances gave Officer Ramirez reasonable suspicion to stop the vehicle.

B

Having determined that Officer Ramirez was justified in conducting an investigatory stop, we turn to whether minor's consent to search was voluntary. To the extent minor has asserted additional claims regarding statements he made at the scene, those claims were not raised below and are forfeited. (*People v. Williams* (2010) 49 Cal.4th 405, 435.)

Minor argues the consent was obtained without providing him *Miranda* warnings. But although a *Miranda* warning is a factor in whether a consent to search is voluntary (*People v. Ramirez* (1997) 59 Cal.App.4th 1548, 1558), "advice as to *Miranda* rights is not a prerequisite to a voluntary consent to search." (*People v. James* (1977) 19 Cal.3d 99, 114.) Accordingly, the failure to *Mirandize* minor prior to seeking consent to search the car did not necessarily render the consent involuntary.

Minor also argues the detention had been transformed into an unlawful de facto arrest rendering the consent involuntary. When consent to a search is the product of an illegal arrest or detention, the consent is not voluntary and the evidence discovered as a

result of that search must be suppressed. (*Wilson v. Superior Court* (1983) 34 Cal.3d 777, 783-784, 791; *People v. Valenzuela* (1994) 28 Cal.App.4th 817, 833.)

The scope of a detention must be carefully tailored to its underlying justification; this scope will vary with the particular facts and circumstances of each case. (*Florida v. Royer* (1983) 460 U.S. 491, 500 [75 L.Ed.2d 229].) "The detention must be temporary, last no longer than necessary for the officer to confirm or dispel the officer's suspicion, and be accomplished using the least intrusive means available under the circumstances. (*Florida v. Royer*[, at p.] 500; *People v. Celis* (2004) 33 Cal.4th 667, 674-675; *In re Carlos M.* (1990) 220 Cal.App.3d 372, 384-385.)" (*People v. Stier* (2008) 168 Cal.App.4th 21, 26-27 (*Stier*).) When a detention exceeds these boundaries, it is a de facto arrest requiring probable cause. (*Ibid.*; *In re Carlos M.*, at p. 384.) "However, there is no hard and fast line to distinguish permissible investigative detentions from impermissible de facto arrests." (*In re Carlos M.*, at p. 384.)

Handcuffing a person substantially increases the intrusiveness of a detention and is not part of a typical detention. (*Stier, supra,* 168 Cal.App.4th at p. 27.) Although handcuffing a person does not automatically transform a reasonable stop into a de facto arrest, "[t]his does not mean, however, that handcuffing a suspect will never transform a detention into an arrest. The issue is whether the use of handcuffs during a detention was reasonably necessary under all of the circumstances of the detention." (*In re Antonio B.* (2008) 166 Cal.App.4th 435, 441, italics omitted.) "Generally, handcuffing a suspect during a detention has only been sanctioned in cases where the police officer has a reasonable basis for believing the suspect poses a present physical threat or might flee. ([*Id.*] at p. 442.) The more specific the information an officer has about a suspect's identity, dangerousness, and flight risk, the more reasonable a decision to detain the suspect in handcuffs will be. [Citation.] Circumstances in which handcuffing has been determined to be reasonably necessary for the detention include when: (1) the suspect is uncooperative; (2) the officer has information the suspect is currently armed; (3) the

officer has information the suspect is about to commit a violent crime; (4) the detention closely follows a violent crime by a person matching the suspect's description and/or vehicle; (5) the suspect acts in a manner raising a reasonable possibility of danger or flight; or (6) the suspects outnumber the officers. [Citation.]" (*Stier,* at pp. 27-28; see *In re Antonio B.,* at pp. 441-442.)

At the time of the stop and detention there had been no report of any crime, let alone a violent felony, and no attendant description of an alleged perpetrator, and there was no reason to transport minor for identification. Minor was not the individual seen running across the street with the backpack or engaging in furtive movements suggesting he might be armed. From the beginning of the detention, minor was compliant with officer commands, including keeping his hands over his head. At the time minor was handcuffed and placed in the patrol car, there were five or six officers on the scene and only two suspects. And, at the time minor was handcuffed, J.L. had already been handcuffed and placed in a patrol car six feet away from minor. Under the circumstances, there is insufficient evidence for the officers to believe that minor posed a danger to them or that handcuffing him was necessary to effectuate the purpose of the stop. (*In re Antonio B., supra,* 166 Cal.App.4th at p. 442.) On this record, as to minor, the handcuffing transformed his detention into a de facto arrest. (*Ibid*.)

C

But even if the de facto arrest had rendered minor's consent involuntary, the inevitable discovery doctrine supports the juvenile court's denial of the suppression motion. Although the prosecution did not raise the inevitable discovery doctrine in the juvenile court, we may consider its application to this case if the factual basis for the doctrine is fully set forth in the record. (*People v. Boyer* (2006) 38 Cal.4th 412, 449; *Green v. Superior Court* (1985) 40 Cal.3d 126, 137-139; *People v. Watkins* (1994) 26 Cal.App.4th 19, 30-31.) That is the case here. Thus, even though the juvenile court did not base its ruling on the doctrine, we may nevertheless affirm the juvenile court's

ruling if its decision to deny the motion to suppress was ultimately correct. (See *Green*, at pp. 138-139.)

Under the inevitable discovery doctrine, illegally seized evidence may be used if it would have been discovered by the police through lawful means, such as during a search incident to arrest. (*People v. Robles* (2000) 23 Cal.4th 789, 800.) "[T]he doctrine 'is in reality an extrapolation from the independent source doctrine: Since the tainted evidence would be admissible if in fact discovered through an independent source, it should be admissible if it inevitably would have been discovered.' [Citation.] The purpose of the inevitable discovery rule is to prevent the setting aside of convictions that would have been obtained without police misconduct. [Citation.]" (*Ibid*., italics omitted.) The inevitable discovery doctrine requires the court to determine what would have happened regardless of the illegal police conduct (*People v. Coffman & Marlow* (2004) 34 Cal.4th 1, 62), or " ' "viewing affairs as they existed at the instant before the unlawful search, what would have happened had the unlawful search never occurred." ' [Citation.]" (*People v. Hughston* (2008) 168 Cal.App.4th 1062, 1072, italics omitted.)

Minor argues we cannot consider the doctrine, as the factual basis is not fully set forth in the record. Specifically, he contends the record was not developed as to whether J.L. received *Miranda* warnings before speaking with officers or whether Martin would have been in the vicinity and waved down the officers to report what happened "but for noticing them across the street during the detention and arrest."

Although the record does not indicate the exact time frame from the robbery to the search of the vehicle and Martin's arrival on the scene, it makes clear the entirety of this incident took place in a short amount of time. Officer Ramirez saw minor drive away and stopped him immediately. Backup officers arrived within minutes. Martin arrived soon after, describing a robbery that had just occurred approximately 100 yards away. Martin was still in the vicinity of the robbery and the stop. Martin was drawn to the scene by his phone tracking application. Officer Ramirez called Martin's phone and

officers heard it ringing inside the car. Even if a de facto arrest had not occurred, events unfolded quickly that would have given officers probable cause to search the vehicle. The factual basis for this conclusion is fully developed in the record. It was appropriate to deny the motion to suppress because the evidence found in the vehicle would have inevitably been discovered.

DISPOSITION

The juvenile court's order denying the motion to suppress, and the dispositional order, are affirmed.

/S/
MAURO, J.

I concur:

/S/
RAYE, P. J.

DUARTE, J., Dissenting.

I respectfully dissent from Part C of the majority opinion in this case, and, consequently, the affirmance of the denial of the minor's motion to suppress.

I agree the minor was under de facto arrest at the time he consented to the search of the car he was driving, which rendered the consent involuntary and thereby invalid, but I do not agree that the record is sufficient for this court to find inevitable discovery where the application of that doctrine was not raised, much less adequately fleshed out, below. In my view the record is, at best, ambiguous as to the doctrine's application to the facts of this particular case.

I do not disagree with the majority's description of the applicable law and thus will not repeat it here. But I cannot agree with the majority's conclusion that the record is even close to complete on this issue. Although the majority notes correctly that "the record does not indicate the exact time frame from the robbery to the search of the vehicle and Martin's arrival on the scene," it nonetheless opines that the record "makes clear the entirety of this incident took place in a short amount of time." (Maj. opn., *ante*, p. 11.) It concludes cursorily that: "Even if a de facto arrest had not occurred, events unfolded quickly that would have given officers probable cause to search the vehicle. The factual basis for this conclusion is fully developed in the record. It was appropriate to deny the motion to suppress because the evidence found in the vehicle would have inevitably been discovered." (*Id*. at p. 12.)

In my view, the record does not support that determination.

Officer Ramirez testified about the investigatory stop and his call for backup, and that he "held the [car's] occupants at gun point until additional officers arrived"; when asked about timing, he replied that the arrival came "within minutes" but that he did not know the "exact answer." He testified that the officers then detained and handcuffed both defendant, the driver of the car, and his passenger, one at a time, and placed them in

separate patrol cars. He was not asked how long this all took, and he did not volunteer that information.

At this time, the majority agrees, as do I, that the minor was under de facto arrest, an arrest that was not justified by the circumstances known to the officers at that time.

Ramirez testified that the minor was then "interviewed," and during that "series of questions" the minor gave Ramirez his consent to search the car. After Ramirez obtained the minor's consent, he spoke to the passenger, and also obtained the passenger's consent. Again, there is no information in the record as to how long the two interviews took. The majority concludes the challenged search of the car would inevitably have legally occurred even without the arrest and detention. Yet we do not know how much time the second interview took, after the de facto arrest and first interview had already occurred. Further, there is no evidence Martin S. was yet on the scene. The clock continued to run.

Officer Ramirez was then asked: "After you spoke with [the passenger], what happened next?" and responded that he then "attempted to contact" the car's owner, who was the minor's mother; he reported that he was not able to make contact. He did not testify how long it took for him to locate contact information for the minor's mother and make the attempt to reach her. He was then asked: "What happened next?" and answered that "During that time an individual drove up to our scene." He was not asked to clarify what "during that time" referenced, but gave the answer in response to the question of that happened "next," signaling it most likely occurred *after* the attempt to contact the minor's mother, which in turn had occurred *after* the sequential custodial interviews of both the minor and his passenger. This is when Martin S. reported what had happened to him at the Donut King.

After describing the events relayed by Martin, Ramirez testified Martin described the robber in a manner that matched the minor's clothing in certain respects. When asked whether "this entire conversation occur[red] before a search was done of the vehicle," Ramirez responded "Yes." However, Ramirez then almost immediately testified "[b]efore that" Martin had reported a phone was stolen from him and that he (Martin) had tracked the phone to that area. When Ramirez was asked what he did next, he responded that he "then obtained" Martin's phone number and called it to see if it was within earshot. Ramirez was then "informed by officers who were conducting the search that the phone was" in the car.

When asked to clarify the timeline, Ramirez testified that he did not know, although he was "told" the search happened "simultaneously" to the ringing and that the other officers had "searched the vehicle after they got permission from the occupants." He then added in response to the court's question that Martin had "show[n] up" before the search. However, Ramirez had made clear prior to that question that he did not actually know the timing, responding in part that he "was not present" to another question from the court about the timing of the search.

If not clearly contradictory, Ramirez's testimony is certainly ambiguous as to the timing of the search of the car--which we know began at some point after the de facto arrest and per Ramirez's testimony was based on the minor's consent--and the arrival of Martin and receipt of his additional information.

Officer Morgan testified about the timing of the search in relation to the call to the stolen cell phone in manner that contradicts the majority's conclusion as well. Morgan testified that after the minor was secured in the patrol car, Morgan "assisted with doing a search of the vehicle." (He did not mention receiving word that the minor had consented to the search.) He did a "systematic" search of the driver's side, starting with the door, then "worked all the way" to where he pushed back the seat and found a loaded firearm. He stopped and took photos of the firearm in place, then removed the magazine, then

secured the gun and ammunition in the back of the patrol car. *After* he found, photographed, unloaded, and secured the firearm, he and another officer searched the passenger side of the car "due to the fact that [they] had reason to believe that there was a cell phone from a victim who arrived on scene" and found the ringing cell phone under the passenger seat.

The combined facts that (1) the information on the missing phone appeared to have been given to Ramirez early in the conversation with Martin to explain Martin's sudden appearance at the scene, and (2) the phone then called by Ramirez was heard ringing by Morgan when he was *already deep into searching the car* strongly suggest that the search had substantially progressed while the minor was held illegally and *prior* to Martin's supplemental information. It is not at all clear that the officers would have remained at the scene and encountered the victim had they not arrested the minors without sufficient cause, obtained invalid consent from both, and searched at least one side of the car, including photographing and securing a gun, *prior* to receiving the victim's information. Even the juvenile court indicated that an "initial search looking for weapons" was *ongoing* before Martin's arrival during its recitation of the facts before ruling, stating it was "at about this time when the search had already begun or underway that the alleged victim showed up."

The record was not fleshed out as to these critical points because inevitable discovery was not a doctrine on anyone's radar. Nor was it initially raised on appeal; the majority raised it sua sponte and now relies on an ambiguous record to support the application of this fact-intensive doctrine. Because on this record it is not at all clear that but for the de facto arrest there would have been enough delay from the initial stop to allow the officers to garner sufficient probable cause to search the car, I cannot agree with the majority's conclusions that "[e]ven if a de facto arrest had not occurred, events unfolded quickly that would have given officers probable cause to search the vehicle" and, even more importantly, that "[t]he factual basis for this conclusion is fully developed

in the record." (Maj. opn., *ante*, p. 12.) I therefore dissent from Part C of the majority opinion and would reverse the juvenile court's order denying the motion to suppress.

/S/
Duarte, J.