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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. HENRY PEREZ, Defendant and Appellant.	B282620 (Los Angeles County Super. Ct. No. TA138569)

APPEAL from a judgment of the Superior Court of Los Angeles County, Patrick Connolly, Judge. Affirmed.

Janet Uson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Kenneth C. Byrne and Paul S. Thies, Deputy Attorneys General, for Plaintiff and Respondent.

Following the denial of his motion to suppress evidence pursuant to Penal Code section 1538.5, Henry Perez pleaded no contest to driving with a .08 percent or greater blood alcohol content within 10 years of three other convictions for driving under the influence of alcohol and was sentenced to two years in state prison. On appeal Perez contends evidence obtained following his traffic stop—the results of field sobriety and chemical tests and Perez's admission to California Highway Patrol Officer Jason Green that he had consumed "two or three beers"—was the fruit of an unlawful detention and should have been suppressed. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Information*

In an information filed April 19, 2016 Perez was charged with one count of driving under the influence of alcohol within 10 years of three other convictions for driving under the influence of alcohol, a felony (Veh. Code, §§ 23152, subd. (a), 23550)[1] (count 1); one count of driving with a blood alcohol level of .08 percent or higher within 10 years of three other convictions for driving under the influence of alcohol, a felony (§§ 23152, subd. (b), 23550) (count 2); one count of driving when his driving privilege had been suspended or revoked for driving under the influence of alcohol after a prior offense, a misdemeanor (§ 14601.2, subds. (a), (d)(2)) (count 3); and one count of failing to install an ignition interlock device, a misdemeanor (§ 23573, subd. (i)) (count 4). It was specially alleged as to count 2 that Perez had a blood alcohol concentration that was 0.15 percent or

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[1] Statutory references are to this code unless otherwise stated.

more, subjecting him to additional punishment (§ 23578), and as to counts 1 and 2 that Perez had previously suffered a serious or violent felony conviction (robbery) within the meaning of the three strikes law (Pen. Code, §§ 667, subds. (b)-(j), 1170.12).

2. *The Suppression Hearing*

Perez moved on September 22, 2016 to suppress the results of the field sobriety and chemical tests performed after Officer Green conducted a traffic stop of Perez's car in the early morning hours of September 7, 2015, as well as any statements Perez made following the stop, on the ground the detention was not supported by a reasonable suspicion Perez had violated the Vehicle Code. Green was the only witness at the suppression hearing, held on October 3, 2016; Perez did not testify. Defense counsel introduced a portion of the mobile video/audio record (MVAR) from Green's patrol car.

Officer Green testified that he and his partner were on duty traveling eastbound on Interstate 105 in the early morning of September 7, 2015 when, at approximately 1:30 a.m., he observed a dark sedan, several car lengths in front of him, swerve across its lane (the number three lane) into the lane to its right (the number four lane) by about three tire widths and straddle the lane line for three to four seconds. As shown in the MVAR, the sedan had been closely following a semi-trailer truck; and the driver did not activate his turn signal before moving to his right.

Officer Green initiated a traffic stop for a violation of section 21658, subdivision (a), failing to drive "as nearly as practical entirely within a single lane." Green also testified, based on the totality of the sedan's movements, he "suspected impaired driving."

Officer Green approached the vehicle after it pulled off the freeway and spoke to Perez, the driver and only occupant of the vehicle. As he talked to Perez, Green detected a strong odor of alcohol and observed that Perez had red and watery eyes and his speech was slurred. When Green asked Perez if he had been drinking, Perez replied he had had "two to three beers." Green conducted several field sobriety tests; Perez performed each of them poorly. A preliminary alcohol screening test indicated Perez had a .22 percent blood alcohol level.

While Officer Green conducted his investigation, his partner ran a license check. Green learned that Perez's license had been suspended for a previous driving under the influence offense and he was on probation. In addition, Perez was required to have an ignition interlock device in his vehicle as a condition of probation; no device had been installed. Perez was arrested for driving under the influence of alcohol.

Relying on the view from the patrol car's MVAR and Officer Green's testimony on cross-examination that there were no other cars around Perez's vehicle at the time he moved into and back from lane number four, defense counsel argued the evidence did not support Green's assertion that Perez had violated section 21658, subdivision (a). Counsel argued Perez had intentionally moved to his right into the number four lane only to realize the lane led to a freeway off-ramp. The large truck in front of him had obstructed Perez's view and prevented him from seeing the freeway sign identifying the off-ramp before he began his lane change. Once the sign became visible, Perez moved back into the number three lane. According to Perez's counsel's description of the events, there had been no swerving or other involuntary movement, and Perez did not straddle the lane line.

Rather, Perez had intentionally begun a lane change and then moved back into his original lane when he saw he could not complete it. Because no dangerous situation had been created for another car by Perez's movements, there was no Vehicle Code violation.

Pointing to the MVAR footage, the prosecutor argued in response that Perez had only used his turn signal when crossing into the lane to his right after Officer Green had activated the patrol car's lights, not when he had originally moved toward the number four lane, supporting the inference the latter lane change was voluntary, while the first movement was involuntary (in other words, a swerve). The prosecutor also argued Perez was traveling too closely to the truck in front of him, which would also reasonably support the traffic stop.

The trial court denied the motion to suppress. The court explained: "[I]t is very obvious that [the prosecution] is correct. The reason why [Perez] doesn't see the sign is because he was so close to a truck. That is unsafe, just on its face, looking at that. . . . [S]omething that I do not have in my notes, that [the prosecution] did state, as far as an argument, which is persuasive, is the fact that there is not only no evidence, whatsoever, before this court that this was an intentional act, but . . . [the video shows that] [h]e does use the blinker [when he is pulled over], showing that that is an intentional or volitional act. As such, for purposes of the 1538.5 motion, the evidence is sufficient. There is probable cause and the motion is denied."

3. *The Plea Agreement*

Following denial of his motion to suppress, pursuant to a negotiated agreement Perez pleaded no contest to count 2, driving with a blood alcohol level of .08 percent or higher within

10 years of three other convictions for driving under the influence of alcohol. The court sentenced him to two years in state prison, awarded him 240 days of presentence custody credit and imposed statutory fees. The remaining counts and special allegations were dismissed in accordance with the plea agreement.

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. Suff* (2014) 58 Cal.4th 1013, 1053; *People v. Redd* (2010) 48 Cal.4th 691, 719; *People v. Ayala* (2000) 23 Cal.4th 225, 255.) However, in determining whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. (*Suff*, at p. 1053; *People v. Zamudio* (2008) 43 Cal.4th 327, 342.) 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.)

2. *Governing Legal Principles*

The Fourth Amendment prohibits unreasonable searches and seizures, including "seizures of persons[] [for] brief investigative stops." (*People v. Souza* (1994) 9 Cal.4th 224, 229.) "It is well settled that the driver of a vehicle that is the subject of a traffic stop is seized within the meaning of the Fourth Amendment." (*People v. Vibanco* (2007) 151 Cal.App.4th 1, 8.) However, "[a] police officer's reasonable suspicion that a driver has violated the Vehicle Code justifies a traffic stop and

detention." (*People v. Corrales* (2013) 213 Cal.App.4th 696, 699; accord, *People v. Hernandez* (2008) 45 Cal.4th 295, 299 ["[o]rdinary traffic stops are treated as investigatory detentions for which the officer must be able to articulate specific facts justifying the suspicion that a crime is being committed"]; *People v. Wells* (2006) 38 Cal.4th 1078 1082 [not an unreasonable search and seizure for officer to "stop and detain a motorist on reasonable suspicion that the driver has violated the law"].)

The officer's suspicion is considered reasonable "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*, *supra*, 9 Cal.4th at p. 231.) However, the subjective motivation of the officer is irrelevant to the reasonableness of a traffic stop under the Fourth Amendment. (*Whren v. United States* (1996) 517 U.S. 806, 813 [116 S.Ct. 1769, 135 L.Ed.2d 89].) "[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." (*Scott v. United States* (1978) 436 U.S. 128, 138 [98 S.Ct. 1717, 56 L.Ed.2d 168]; see *People v. Suff*, *supra*, 58 Cal.4th at p. 1054 ["'[a]ll that is required is that, on an objective basis, the stop "not be unreasonable under the circumstances"'"]; see also *People v. Miranda* (1993) 17 Cal.App.4th 917, 923-926; *People v. Uribe* (1993) 12 Cal.App.4th 1432, 1435-1438.)

3. *The Traffic Stop Was Justified*

Based on Officer Green's testimony, which the trial court impliedly found credible, and its own review of the MVAR footage, the court concluded the traffic stop was justified because (1) the movement of Perez's vehicle across lanes and straddling the lane line that Green had observed appeared to be involuntary, a violation of section 21658, subdivision (a), as Green had determined, and (2) Perez had been following too closely behind the truck in front of him, a violation of section 21703 ["[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent having due regard for the speed of such vehicle and the traffic upon, and the condition of, the roadway"].)

On appeal Perez argues section 21658, subdivision (a), which requires a vehicle be driven "as nearly as practical entirely within a single lane," should not be interpreted to establish a bright-line rule and that under appropriate circumstances a single instance of crossing over a lane line, where there is no other erratic or improper driving, does not necessarily constitute a violation of the Vehicle Code. As an abstract matter Perez may well be correct, but the issue here is not whether Perez actually violated section 21658, subdivision (a), but whether Officer Green, observing Perez's movements, including his failure to use his turn signal when he moved into the number four lane, reasonably suspected Perez's actions in moving in and out of the number three lane were involuntary and thus in violation of that provision, providing appropriate grounds to conduct a traffic stop.

Similarly, the interpretation of Perez's movements advanced by Perez's counsel at the suppression hearing and repeated on appeal—because the semi-trailer truck obstructed

his view, Perez failed to realize the number four lane led to an off-ramp; so he intentionally returned to the number three lane without completing the lane change—might be plausible. But "[a]s the finder of fact in a proceeding to suppress evidence [citation], the superior court is vested with the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences in deciding whether a search is constitutionally unreasonable." (*People v. Woods* (1999) 21 Cal.4th 668, 673-674.) Reviewing those findings for substantial evidence, as we must (*People v. Hernandez*, *supra*, 45 Cal.4th at p. 299), we accept the logical inferences the trial court drew from Officer Green's testimony and the video recording. (See *People v. Maury* (2003) 30 Cal.4th 342, 396.) That evidence reasonably supported Green's conclusion, as he articulated at the suppression hearing, that Perez's actions were involuntary and he had failed to drive as nearly as practical within a single lane as required by section 21658, subdivision (a). (See *Hernandez*, at p. 299 [law enforcement officers are allowed to draw upon their experiences and specialized training to make inferences and deductions].) It also supports the trial court's additional finding that Perez had followed the truck more closely than was prudent, violating section 21703, an alternative, objective basis for the traffic stop.

4. *The Trial Court Did Not Improperly Limit Defense Counsel's Cross-examination of Officer Green*

During direct examination Officer Green explained his observations of Perez's vehicle and the basis for his conclusion that the movements seemed unintentional. The trial court sustained its own objection to defense counsel's question on cross-examination, "What is it about someone's lane change that makes

you feel it is not deliberate?"[2] On appeal Perez argues that by doing so the trial court improperly restricted his ability to cross-examine the witness. But Green had already testified as to the reasons he believed Perez's lane change and line straddling were

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[2] During cross-examination the following exchange took place:

"[Defense counsel]: Okay. Now in your duties you notice people changing lanes often on the freeway, correct?

"[Prosecutor]: Objection. Relevance.

"The Court: You can answer yes or no.

"[Officer Green]: Correct. Yes.

"[Defense counsel]: And each of those lane changes takes a couple of seconds to be completed, correct?

"The Court: Okay. At this point in time the court's going to sustain its own objection.

"[Defense counsel]: Well, your Honor, the whole purpose of this is dealing with a lane change, and so we're trying to establish his knowledge on what a typical lane change takes, and I think that's extremely relevant here.

"The Court: The court's sustaining its own objection.

"[Defense counsel]: Okay. So about how long does a typical lane change take?

"The Court: I just sustained my own objection.

"[Defense counsel]: So what is it about someone's lane change that makes you feel it's not deliberate?

"The Court: Okay. This is not relevant.

"[Defense counsel]: As to whether this—

"The Court: I'm not going to argue with you. It's not relevant."

unintentional, and defense counsel had a full opportunity to question Green about those factors, what he saw and what he did not see.[3] Precluding additional questions as to Green's views in general about lane changes and what may or may not be typical was well within the court's broad discretion to "'impos[e] reasonable limits on defense counsel's inquir[ies] based on concerns about harassment, confusion of issues, or relevance.'" (*People v. Pearson* (2013) 56 Cal.4th 393, 455.)

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[3] For example, the following exchange took place during the cross-examination of Officer Green:

"Q. Okay. Now, you say you saw Mr. Perez swerve over. He was in the number three lane?

"A. Yes.

"Q. Correct?

"A. Yes.

"Q. And you said he swerved to the number four lane?

"A. I believe so; yes.

"Q. Okay. Now, by swerve you mean he made a maneuver that was not deliberate, correct?

"A. I observed the vehicle move out of the lane that it was established in and cross over into the number four lane in an unsafe manner.

"Q. In an unsafe manner? And what was unsafe about it?

"A. It was—there was no blinker. It seemed like it was an unintentional movement given by the driver."

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

FEUER, J.