Filed 6/28/12 P. v. Matthews CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. OLIVER LAQURON MATTHEWS, Defendant and Appellant.	B227596 (Los Angeles County Super. Ct. No. PA061568)

APPEAL from a judgment of the Superior Court of Los Angeles County. Richard F. Walmark, Judge. Affirmed.

Joy A. Maulitz, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Scott A. Taryle, and Douglas L. Wilson, Deputy Attorneys General, for Plaintiff and Respondent.

A jury returned a verdict finding Oliver Matthews guilty of the crime of transporting a controlled substance, cocaine base. (Health & Saf. Code, § 11352, subd. (a).) Upon a court trial of prior conviction allegations, the court found that Matthews had suffered a prior strike, six prior felony convictions with a prison term, and prior drug-related convictions. (Pen. Code, §§ 667, subds. (b)-(i); 667.5, subd. (b); Health & Saf. Code, § 11370.2.) The court sentenced Matthews to an aggregate term of 16 years in state prison. We affirm the judgment.

FACTS

On August 6, 2008, Los Angeles Sheriff's Department Deputy Roland De La Maza and his partner, Deputy Jennifer Harris, recovered a baggie containing small bindles of aluminum foil from Matthews during a traffic infraction stop. Based on the manner of packaging, Deputy De La Maza suspected the baggie contained some kind of narcotic. Subsequent testing showed the baggie contained 39 bindles of rock cocaine. During an inventory search of the car, Deputy Harris recovered $620 in currency, two cellular telephones, and aluminum foil. The search and seizure of the rock cocaine became an issue upon the filing of a motion to suppress evidence; the facts presented at the hearing on the motion to suppress are reviewed in more detail below in addressing Matthews's claim that his motion to suppress should have been granted.

In 2009, the People filed a second amended information charging Matthews as follows: possession of a controlled substance, cocaine base, for sale (Health & Saf. Code, § 11351.5; count 1) and transportation of a controlled substance, cocaine base (Health & Saf. Code, § 11352, subd. (a); count 2). Further, the information alleged that Matthews suffered a prior strike conviction for attempted robbery in 1996 (Pen. Code, § 667, subds. (b)-(i)), and six prior convictions with a prison term (Pen. Code, § 667.5, subd. (b).) The information alleged two prior drug-related convictions (Health & Saf. Code, § 11370.2, subd. (a)). Finally, the information alleged Matthews was released on bail on another case when he committed his current offenses (Pen. Code, § 12022.1).

The case was tried to a jury in October 2009. At trial, the prosecution presented evidence establishing the facts summarized above. Matthews took the stand on his own behalf; he testified that he possessed the rock cocaine for personal use and not for sale. The trial court instructed the jury on the crime of transporting a controlled substance as alleged in count 2. As to count 1, possession of a controlled substance for sale, the court instructed the jury on the greater offense as alleged (Health & Saf. Code, § 11351.5), and on the lesser offense of simple possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)). The case was submitted to the jury.

On October 26, 2009, the jury returned a verdict finding Matthews guilty as to count 2 of the crime of transporting a controlled substance, cocaine base (Health & Saf. Code, § 11352, subd. (a)). At the same time, the jury advised the court that it could not reach a verdict as to the greater offense alleged in count 1, possession of a controlled substance for sale, but that it had reached a unanimous verdict on the lesser offense of simple possession of a controlled substance. Following an exchange between the court and counsel about what to do with count 1 (everyone recognizing that the "verdict" on the lesser offense was improper without a verdict of acquittal on the greater offense), the prosecutor moved to dismiss count 1 pursuant to Penal Code section 1385, and the court granted the motion.

On June 22, 2010, the trial court found all the prior conviction allegations to be true. On July 12, 2010, the trial court sentenced Matthews as to count 2 to an aggregate term of 16 years in state prison. The sentence is as follows: a 5-year upper term as to count 2, doubled to 10 years for the prior strike, plus two 3-year terms pursuant to Health and Safety Code section 11370.2, for an additional 6 years.

DISCUSSION

I. The Motion to Suppress Evidence

Matthews filed a motion to suppress the cocaine base involved in his case. (Pen. Code, § 1538.5.) The trial court denied the motion. On appeal, Matthews contends the trial court erred in denying the motion. Specifically, Matthews contends the initial traffic stop violated his rights under the Fourth Amendment to the United States Constitution.[1] We disagree.

A police officer is permitted to initiate an investigative stop or detention of an individual without violating the Fourth Amendment when the officer has a reasonable suspicion that criminal activity may be afoot. (See *Terry v. Ohio* (1968) 392 U.S. 1, 30; and see, e.g., *People v. Conway* (1994) 25 Cal.App.4th 385, 388.) Reasonable suspicion is an objective standard; it is not based on the particular officer's subjective state of mind at the time of the stop or detention. (*People v. Conway, supra*, 25 Cal.App.4th at p. 388; see also *People v. Letner and Tobin* (2010) 50 Cal.4th 99, 147 (*Letner*).) The test for determining whether reasonable suspicion exists requires the detaining officer to point to articulable facts which, considered in light of the totality of the circumstances, provide an objective basis for the conclusion that the person detained may have been involved in criminal activity. (*People v. Souza* (1994) 9 Cal.4th 224, 230.) In determining whether reasonable suspicion is present, a court is allowed to employ commonsense judgments and inferences about human behavior. (*Letner, supra*, 50 Cal.4th at p. 146.)

When presented with a claim on appeal that a motion to suppress should have been granted, the reviewing court defers to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the historic facts so fixed, the search or seizure was permissible under the Fourth Amendment, the reviewing court exercises independent judgment. (See *People v. Lomax* (2010) 49 Cal.4th 530, 563; *People v. Maury* (2003) 30 Cal.4th 342, 384.)

---

[1] Hereafter, the Fourth Amendment.

Subject to exceptions that are not involved in Matthews's current case, Vehicle Code section 5204, subdivision (a),[2] requires the use of a "tab" to indicate "the year of expiration" of the vehicle's registration and the use of a tab to indicate "the month of expiration" of the vehicle's registration. Section 5204, subdivision (a), further provides: "Current month and year tabs shall be attached to the rear license plate assigned to the vehicle for the last preceding registration year in which license plates were issued . . . . Vehicles that fail to display current month and year tabs or display expired tabs are in violation of this section."

Police officers have authority to arrest persons for traffic offenses, i.e., infractions, pursuant to so-called "cite and release" procedures prescribed by statute. (See, e.g., Pen. Code, § 853.5; Veh. Code, §§ 40300 et seq.; 40500 et seq.)

In this case, Deputy De La Maza testified to the following facts at the hearing on the motion to suppress. On August 6, 2008, Deputies De La Maza and Harris were on patrol on Sierra Highway in Canyon Country. At the intersection of Soledad Canyon Road, the deputies saw a 2005 Nissan Altima, and routinely ran the license plate number through the Mobile Digital Terminal (MDT) in their patrol car. The deputies received information that the vehicle registration assigned to that license plate number was valid until September 2008. However, the registration stickers on the license plate indicated that the registration was valid only through August 2008.[3] The license plate was assigned to a Nissan Altima. Deputy De La Maza was aware from his training and experience that people sometimes switched date stickers or entire license plates on cars to make it appear that a car's registration is current. The deputy was also aware that sometimes, when a vehicle is stolen, the thief will also steal a license plate from another vehicle of the same

---

[2] All further references to section 5204 are to that section of the Vehicle Code.

[3] As we read the record, it is undisputed there was an "August" registration tab on the license plate, and it is undisputed there should have been a "September" registration tab on the plate. The record convinces us that the wrong registration tab was a DMV mistake. In other words, the Nissan's license plate should have shown a September-to-September registration period. However, due to the registration tab mistake, the plate showed a registration period of August-to-August.

type and put it on the stolen vehicle. This is known as a "cold-plated" car. Based on his observations, the deputy believed there was at least a possible violation of the registration statute, section 5204, subdivision (a). Deputy De La Maza also wanted to make sure that the license plate actually belonged to the car. The deputies initiated a traffic stop.

Deputy De La Maza approached the car and contacted the driver, Matthews. The deputy asked Matthews for his driver's license and proof of registration. The deputy intended to use the registration document to confirm that the car was properly registered, and that the vehicle identification number (VIN) matched the license plate affixed to the car. When Matthews stated that he was driving to the DMV because his driver's license was suspended the deputy asked him to get out of the car.[4]

As Matthews was getting out of the car, Deputy De La Maza saw a baggie containing small bindles of aluminum foil in Matthews's left hand. The deputy took the baggie and placed it on the hood of the car. Based on the packaging, Deputy De La Maza suspected that the baggie contained some kind of narcotic. Matthews spontaneously stated, "That's mine and my friend's for personal use."[5] After the officers confirmed that Matthews was driving with a suspended license, and that his car would be towed, Deputy Harris conducted an inventory search of the car. She found $620 in currency, two cellular telephones, and some aluminum foil.[6]

For his part, Matthews called Kylie Roberson, the owner of the Nissan Altima, to testify at the hearing on the motion to suppress. Roberson testified that she purchased the Nissan new on August 31, 2005. She was sent license plates with the expiration stickers of August 2006. However, the registration documents from the DMV indicated that the registration period ran from September 2, 2006 to the following year. After the incident

---

[4] Driving with a suspended license is a misdemeanor.

[5] Subsequent testing showed the baggie contained 39 bindles of rock cocaine each wrapped in aluminum foil.

[6] At some point, the officers determined that Matthews was not the registered owner of the Nissan. Deputy De La Maza eventually contacted Kylie Roberson, the registered owner. She told the deputy that Matthews routinely drove the car.

involving Matthews, Roberson went to the DMV, and explained there appeared to be a disparity with her registration stickers. The DMV gave Roberson a September sticker to replace the August sticker.

Matthews contends there was no reasonable suspicion to support the traffic stop involved in his case because: (1) there was no evidence suggesting that a crime had been committed; (2) the vehicle did not fail to display current month and year tabs; and (3) the vehicle did not display expired tabs. Matthews argues Deputy De La Meza's explanation that he and his partner officers stopped the vehicle, in part, to investigate whether it may have been stolen "makes no sense."

According to Matthews: "The discrepancy between the August sticker on the plate and the September date shown by the MDT had nothing whatsoever to do with the car underneath the plate. A concern that a car might be stolen might make sense if the MDT showed that the license plate did not match the . . . vehicle make, model or year, but the license plate did match the vehicle here, according to the MDT information. The discrepancy noted by the deputy here related only to the license plate itself, and did not have any bearing at all on the identity or status of the car. [¶] It was not reasonable to suspect that the car was stolen when the plate matched the car in every regard."

The trial court rejected Matthews's theme, and so do we. The issue is whether the discrepancy between the license plate and the registration records was enough to support a reasonable suspicion justifying a traffic stop. We are satisfied that it was.

Based on the information received from the MDT, the car driven by Matthews did not display the accurate month of expiration of registration as was reflected in the DMV records. We agree with the trial court's common sense conclusion that deputy could have had a reasonable suspicion, as he testified, that something was askew. The deputy was justified in making an investigatory stop to determine whether the car was properly registered and/or was using the license plates and tabs assigned to the car. That some later, innocent explanation could and did account for the discrepancy between the month tab on the license plate and the expiration date shown on the MDT, is insufficient to find no reasonable suspicion arising from the facts existed at the time of the traffic stop.

(*Letner, supra*, 50 Cal.4th at p. 148 ["possible innocent explanations for an officer's observations do not preclude the conclusion that it was reasonable for the officer to suspect that criminal activity was afoot"].) Matthews's argument that no reasonable car thief would have put an August-to-August license plate on the Nissan had it been stolen gives far too much credit to the intellect and foresight of car thieves, and does not negate that reasonable suspicion existed.

In order to confirm nothing was afoot – either in that the tabs were wrong or to ensure that the license plates were assigned to that car – the deputy needed to inspect the registration documents and VIN. This could be accomplished only by stopping the car. In the end, had Matthews possessed a valid driver's license, the discrepancy may well have been resolved, and he could have been on his way. We disagree with Matthews that there may have been less intrusive means to ascertain the needed information; he offers no authority for his proposition that the deputies should have tried calling the DMV in an attempt to learn what may have been wrong as between the August registration tab and the September registration expiration date.

In summary, the totality of the circumstances established the existence of objective reasonable suspicion to stop the car. Thereafter, all remaining evidence of Matthews's criminal activity — from his driving with a suspended license, to the bindles of rock cocaine — was admissible because the remaining scope of the search was supported by probable cause.[7] (See generally *California v. Acevedo* (1991) 500 U.S. 565, 579-580; *People v. Superior Court* (*Nasmeh*) (2007) 151 Cal.App.4th 85, 100.)

II. Discovery

Prior to trial, Matthews sought discovery of the personnel records of Deputies De La Maza and Harris concerning complaints by members of the public of dishonesty and falsification of police reports and similar categories bearing on credibility. (See *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*); see also Penal Code, § 832.5;

[7] Matthews filed a petition for writ of habeas corpus (Case No. B233777) concurrent with his appeal. The petition expands on his objections to the initial traffic stop based on the registration tab matters. We address the petition by separate order.

Evid. Code, § 1043 et seq.) The trial court ordered the custodian of records of the LAPD to produce the personnel files, and conducted an in camera review to determine whether relevant, discoverable material existed. The court ordered discovery of five items.

Matthews has requested our court to conduct an independent review to determine whether the trial court conducted a proper hearing, and made a proper ruling after the in camera hearing on his *Pitchess* motion. (See *People v. Mooc* (2001) 26 Cal.4th 1216.) We have reviewed the transcript of the in camera hearing and conclude the trial court conducted the hearing properly, describing the nature of all complaints, if any, against the officers, and we find the court did not abuse its discretion in ordering the custodian of records to disclose discovery as noted above.

DISPOSITION

The judgment is affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

SORTINO, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.