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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. TRAJON MICHAEL THOMAS, Defendant and Appellant.	B280882 (Los Angeles County Super. Ct. No. BA451756)

APPEAL from a judgment of the Superior Court of Los Angeles County. Craig Richman, Judge. Affirmed.

Alex Green, 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, Assistant Attorney General, Jonathan M. Krauss and Abtin Amir, Deputy Attorneys General, for Plaintiff and Respondent.

In an information filed by the Los Angeles County District Attorney's Office, defendant and appellant Trajon Michael Thomas was charged with possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1)).[1] The information also alleged that defendant had suffered a prior strike conviction (§§ 667, subd. (d), 1170.12, subd. (b)) and that he had served one prior prison term (§ 667.5, subd. (b)).

Defendant initially pleaded not guilty, but he later changed his plea to no contest and admitted the allegations following the denial of his motion to suppress evidence (§ 1538.5). The trial court accepted his plea, dismissed his prior strike pursuant to section 1385, and sentenced him to the high term of three years in prison, plus one year for the prison prior. The trial court awarded him 140 days of custody credit.

This timely appeal ensued. Defendant contends that the trial court erred by denying his motion to suppress evidence.

We affirm.

FACTUAL BACKGROUND[2]

Prior to calling any witnesses, the parties stipulated that there was no "arrest or search warrant in play during the commission of this search and seizure."

A. Prosecution Evidence

On October 27, 2016, Los Angeles Police Officer Charles Castaneda and his partner, Officer Christian Peraza, were in a

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

[2] Because there was no trial, this evidence is based on evidence adduced at the suppression hearing.

marked police car patrolling an area in Los Angeles near Vermont and 84th Street. At approximately 5:20 p.m., a vehicle attracted Officer Castaneda's attention because it had "heavy tinted windows" and paper license plates. The officers decided to attempt a traffic stop, but the car pulled into a parking lot and parked before they activated their forward-facing lights. The parking lot was connected to a marijuana dispensary with which Officer Castaneda was familiar.

Officer Castaneda exited the police vehicle and approached the passenger side of the parked car, but was unable to see into the car because of the tinted windows. When he reached the vehicle, he asked the driver, later identified as defendant, to lower the windows; defendant complied. Officer Castaneda saw that defendant was alone in the car. As soon as defendant lowered the windows, Officer Castaneda "smelled a very strong odor of marijuana emitting from the vehicle." The officer looked down at the floor of the interior of the car and saw a glass bottle of the type that he, through his experience, knew was commonly used to carry marijuana. He also saw a green medicine canister in the door handle area on the inside of the passenger-side door.

Officer Castaneda, a six-year veteran of the police force, was familiar with the smell of marijuana, both burnt and unburnt. He identified the strong smell emitting from defendant's car as unburnt marijuana. At that point, Officer Peraza, who had been standing on the driver's side of the vehicle, asked defendant to step out of the car.

Officer Castaneda searched the vehicle for marijuana, but he did not specifically look for prescription labels on the two marijuana containers he had seen. The two containers were empty except for some "crumbs" left behind. Officer Castaneda

determined that the strong smell of marijuana must have come from somewhere else in the car because the quantity he smelled could not have fit in the two containers and, based on his familiarity with the nearby marijuana dispensary, he knew that the smell was not coming from there either. While Officer Castaneda ultimately did not find a "usable amount of" marijuana in the car, he testified that, based on his "six years of training and experience," defendant's car was the source of the marijuana smell that he identified only after defendant lowered his car windows.

While searching the folding armrest or cup holder area in the middle of the back seat, Officer Castaneda pulled down the central cushion using the attached loop and noticed a piece of plastic separating the cabin from the trunk. When he pulled the plastic separator down, he immediately saw a firearm, which he identified as a loaded, .40-caliber semiautomatic Desert Eagle.

Around the time of the search, a woman, later identified as Jasmine Wagner (Wagner), approached the officers on foot and stated that she was the owner of the vehicle that defendant was driving. The officers told Wagner that she was free to stand near defendant while they finished their investigation. Officer Castaneda did not recall Wagner saying anything about the marijuana bottles being hers or that she had a marijuana recommendation.

On cross-examination, Officer Castaneda said that the officers approached the vehicle, which was parked within 100 feet of a marijuana dispensary, for having tinted windows and no license plates, both of which he knew to be Vehicle Code violations. Officer Castaneda did not check the front windshield for a registration paper when he initially approached the vehicle.

He explained that a primary consideration during a traffic stop is "officer safety," and that he needed to make sure that there were no additional occupants, no contraband or weapons, and that his partner was safe. He explained that, during a traffic stop, he needs to "be paying attention to [his] surroundings" for safety reasons.

B. Defense Evidence

Wagner worked at the marijuana dispensary at the time of the search, and defendant was driving her car that day to pick her up from work. According to Wagner, the area outside the dispensary smelled like marijuana. Wagner sometimes transported marijuana in her car, and she admitted that the bottles like the ones recovered from the car commonly contained marijuana.

When she first approached the officers, she told them only that she had her temporary registration and proof of insurance. Defense introduced a document that Wagner identified as her vehicle registration documentation. She admitted that she did not tell the officers that she had a marijuana recommendation until after an officer informed her that he "had searched the car because he smelled marijuana" and that he had "probable cause." She responded by telling the officer that it smelled like marijuana because they were near a dispensary that contained a lot of marijuana. Defense also introduced a document that Wagner identified as her marijuana recommendation. Following the search, the officers took Wagner to a police station for questioning and released her several hours later.

On cross-examination, Wagner admitted that she kept marijuana containers in her car, which, at some point, contained marijuana. She also stated that she sometimes opened

marijuana containers in her car. But, the car did not smell like marijuana the day before the search because she had done a "thorough job" vacuuming it. She said that she had left the empty marijuana containers in the car the day before when she washed and vacuumed it, and she did not check the trunk while cleaning.

DISCUSSION

Defendant concedes the general rule that the smell of marijuana coming from a vehicle is sufficient to furnish probable cause for a search. But, he contends that this general rule is inapplicable here because, at the time of the search, there was only a possibility that Officer Castaneda would find illegal contraband. According to defendant, "the facts show that although Officer Castaneda may have initially had probable cause to search the car for illegal marijuana at the moment [defendant] opened the [car] windows and the officer smelled 'a very strong odor of marijuana emitting from the vehicle,' from that moment on, additional facts made known to the officer resulted in a lessening of the probability to the point where there was only a possibility that additional illegal marijuana would be found in the car."

A. Relevant proceedings

1. *Defendant's motion to suppress evidence*

After the information was filed, defendant moved to suppress evidence of the firearm that police found in the trunk of the car he was driving. He argued that he had been "detained without specific articulable facts indicating that he was involved in criminal activity, and further that property within his dominion and control was searched without probable cause." The motion acknowledged that the police report indicated that officers

(1) had approached defendant's car "because the car had paper plates and tinted windows," (2) that they smelled marijuana emanating from defendant's car after he rolled down the windows, and (3) that they found a firearm in the rear compartment of the car as a result of their search after smelling the marijuana.

2. *Parties' arguments and trial court ruling*

The trial court started the suppression hearing by noting that it had "read and considered the motion" to suppress evidence. It also noted that, at the time of this incident, it was still illegal to possess marijuana in California.

Following witness testimony, the prosecutor argued that the officers had probable cause to stop the vehicle because Officer Castaneda and Wagner both testified that the car that defendant was driving had tinted windows and no license plates. She noted that Officer Castaneda smelled marijuana from defendant's car only after he rolled the windows down, and that he searched the rest of the car because the empty containers could not explain the strong odor.

Defense counsel argued that the registration on the windshield was valid at the time of the search and that officers failed to look at the front windshield for the registration papers, even though it would have been simple to do so. Counsel also argued that the officers should have inspected the marijuana bottles to find out whether they were prescription bottles for marijuana; the trial court rejected this contention because defendant did not have a marijuana recommendation. Counsel concluded by arguing that the officers were obligated to stop their investigation once Wagner claimed ownership of the car and the marijuana bottles, and that the officers were further obligated to

look for registration on the windshield of the car and to inspect the bottles for prescription labels.

The trial court rejected defense counsel's arguments and found that the officers had probable cause to stop the car and investigate because their concerns about registration were valid. Citing *In re Raymond C.* (2008) 45 Cal.4th 303, 308, the trial court explained that officers "may stop a vehicle if [a] temporary permit is not in the rear windows, even if displayed in the front window," and that "[o]fficers are not required to drive around the car to look at all possible areas where temporary permits may be." It also noted that case law supported Officer Castaneda's testimony that officer safety is of utmost importance during a traffic stop, thereby excusing his failure to search every part of the car for registration papers upon approaching it.

The trial court also found that the officers had probable cause to continue searching the vehicle for "another source of the odor in the vehicle," despite representations by Wagner or the fact that the bottles were empty. The trial court explained that the officers were "not required to accept Ms. Wagner's representation," regardless of whether the bottles had her name on them because she was not in the vehicle and defendant was the only one exercising dominion and control over it. The trial court further explained that the officers smelled marijuana coming from the vehicle as soon as the windows were lowered, that they had valid concerns because Wagner admitted that she transported marijuana in her car, and that the smell persisted even though the bottles were empty.

B. Standard of review

In reviewing a trial court's suppression ruling, the appellate court defers to the trial court's express and implied

factual findings if supported by substantial evidence, and we independently assess the legal question of whether the challenged search or seizure satisfies the Fourth Amendment. (*People v. Brown* (2015) 61 Cal.4th 968, 975; *People v. Panah* (2005) 35 Cal.4th 395, 465.)

C. Relevant law

The Fourth Amendment to the United States Constitution protects the "'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'" (*California v. Acevedo* (1991) 500 U.S. 565, 569.) While ""'searches conducted outside the judicial process, without prior approval by judge or magistrate, are pre se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions,'"" one such exception is the search of automobiles where police have probable cause to believe contraband or evidence is contained therein. (*Id*. at p. 580; *People v. Strasburg* (2007) 148 Cal.App.4th 1052, 1059 (*Strasburg*).)

Probable cause to search is defined as "a fair probability that contraband or evidence of a crime will be found in a particular place." (*Illinois v. Gates* (1983) 462 U.S. 213, 238.) It exists "where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found." (*Ornelas v. United States* (1996) 517 U.S. 690, 696.) "[P]robable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." (*Illinois v. Gates*, *supra*, at p. 232.) The circumstances justifying probable cause must be viewed "through the lens of [an officer's] experience and expertise."

(*Ornelas v. United States*, *supra*, at p. 699; see also *People v. Hunter* (2005) 133 Cal.App.4th 371, 375.)

When police have probable cause to justify the search of a lawfully stopped vehicle, that probable cause also justifies an "immediate" search of "every part of the vehicle and its contents that may conceal the object of the search." (*California v. Acevedo*, *supra*, 500 U.S. at p. 570.) Further, certain containers are so distinctive in nature and so likely to carry contraband that an officer may, based on experience with such containers, have probable cause to search or seize such a distinctive container found in plain view. (See, e.g., *People v. Lilienthal* (1978) 22 Cal.3d 891, 898–899; *People v. Lee* (1987) 194 Cal.App.3d 975, 984.)

California courts have long established that the strong odor of fresh marijuana can provide officers with probable cause to believe that contraband may be present, thereby justifying a warrantless search. (*Strasburg, supra,* 148 Cal.App.4th at pp. 1059–1060.) The possibility of an innocent explanation does not lessen probable cause or invalidate the search or seizure. (*In re J.G.* (2010) 188 Cal.App.4th 1501, 1508; *Johnson v. Lewis* (2004) 120 Cal.App.4th 443, 453.)

D. Analysis

Here, the evidence establishes that Officers Castaneda and Peraza had probable cause to believe that there was a large quantity of marijuana in the vehicle that defendant was driving. Defendant does not contest the fact that the officers had probable cause to search the vehicle for narcotics once they "smelled 'a very strong odor of marijuana emitting from the vehicle'" immediately upon defendant lowering the car windows. In fact, it is well-established that an officer smelling marijuana emitting

from a vehicle may provide him with probable cause to search the entire vehicle and its contents in search of contraband. (*People v. Johnson*, *supra*, 162 Cal.App.3d at p. 1008.)

Defendant's contention that the smell from the marijuana dispensary somehow vitiated the officers' probable cause is meritless. First, Officer Castaneda testified that he did not smell the specific odor from defendant's car until defendant lowered the car windows. Second, based upon his familiarity with the smell from that dispensary, Officer Castaneda testified that the smell "from that dispensary doesn't smell like" the odor that came from defendant's car. And, even if Officer Castaneda had ignored the distinction between the smells and believed that the dispensary was a possible explanation for the odor—which he did not—the possibility would not dissolve the probable cause stemming from the fact that a "very strong" odor "emitted from the [car]." (*Strasburg*, *supra*, 148 Cal.App.4th at pp. 1059–1060.)

Aside from the strong odor, the officers had a second, independent source of probable cause to search the vehicle for contraband once Officer Castaneda saw the distinctive medicine canisters in the car that he knew were commonly used for storing marijuana. (*People v. Lilienthal*, *supra*, 22 Cal.3d at pp. 898–899.)

Similarly, we reject defendant's claim that Officer Castaneda's probable cause to search was vitiated by the fact that there were only "a few crumbs" of marijuana in the containers he found. After all, "the observation of any amount of marijuana . . . establishes probable cause to search pursuant to the automobile exception." (*People v. Waxler* (2014) 224 Cal.App.4th 712, 725.)

Moreover, we are not convinced by defendant's contention that the fact that "no other marijuana was visible in the passenger compartment" was a vitiating factor that reduced the level of suspicion below probable cause. Contrariwise, it was reasonable for Officer Castaneda to believe that there was marijuana elsewhere in the vehicle because he "smelled a quantity of marijuana that would have been greater than what would be" found in the two containers he saw. While it was possible that the smell was so strong because a large quantity of marijuana had been in the vehicle earlier that day, the officer was entitled to conduct a search to see if it was still present. (*People v. Waxler*, *supra*, 224 Cal.App.4th at p. 725.)

There is also no merit to defendant's contention that probable cause to search was vitiated by the fact that Wagner approached officers and claimed ownership of the car and the marijuana containers, or that she claimed to have a marijuana recommendation. (See, e.g., *In re J.G.*, *supra*, 188 Cal.App.4th at p. 1508 [possible innocent explanation does not lessen probable cause or invalidate a search or seizure]; *Kodani v. Snyder* (1999) 75 Cal.App.4th 471, 477 [even if circumstances are consistent with lawful activity as with criminal activity, officer may still inquire into such circumstances as proper discharge of the officer's duties].) The officers were not required to accept Wagner's representation, even if the bottles had her name on them, because she was not in the vehicle; defendant was the only one exercising dominion and control over it. And, even if Wagner had a marijuana recommendation, that would not allow defendant to possess or transport marijuana. In fact, just because Wagner had a recommendation to possess a small amount of marijuana for medicinal use did not mean that officers

could not search the car for an illegal quantity of marijuana, especially when they believed that the quantity they smelled was much larger than the amount that could fit into the two empty bottles that they found. (*Strasburg*, *supra*, 148 Cal.App.4th at p. 1059.) Moreover, Wagner's statements to the officers occurred after they had conducted their search.[3] Thus, her statements, even if true, could not have retroactively vitiated the officers' probable cause to search because they were unaware of those facts at the time they conducted the search. (*Ornelas v. United States*, *supra*, 517 U.S. at pp. 696, 699.)

Finally, there is no merit to defendant's assertion that Officer Castaneda was not a credible witness. "The power to judge the credibility of witnesses and to resolve conflicts in the testimony is vested in the trial court, and its findings of fact, express or implied, must be upheld if supported by substantial evidence." (*In re Carpenter* (1995) 9 Cal.4th 634, 646.) Regardless, there was nothing improbable about Officer Castaneda's testimony, which was consistent with Officer Peraza's preliminary hearing testimony. First, it did not matter if there were registration documents on the front windshield because the window tint gave officers probable cause to investigate. Second, as the trial court explained, pursuant to *In re Raymond C.*, *supra*, 45 Cal.4th at page 308, officers "may stop a vehicle if a temporary permit is not in the rear windows, even if

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[3] In his reply brief, defendant contends that the parties understood that Wagner made her statements to the officers before they conducted their search of the car. Assuming for discussion purposes only that this is true, in light of all of the other evidence, Wagner's statement alone would not have vitiated probable cause.

displayed in the front window." Third, in light of Officer Castaneda's utmost concern for officer safety, it was reasonable that he was more focused with keeping his eyes on the windows and occupants than on checking the front windshield of the car. Last, Officer Castaneda never said that there were no registration documents on the windshield; he only testified that he did not recall looking there. Thus, defendant has not shown that Officer Castaneda's testimony was "physical[ly] impossibl[e] or inherent[ly] improbabl[e]." (*People v. Allen* (1985) 165 Cal.App.3d 616, 623.)

DISPOSITION

The judgment is affirmed.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
HOFFSTADT

_____, J.*
GOODMAN

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