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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. LESTER SCOTT, Defendant and Appellant.	B234000 (Los Angeles County Super. Ct. No. BA378112)

APPEAL from the judgment of the Superior Court of Los Angeles County. Barbara R. Johnson, Judge. Affirmed.

Ann Krausz, 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, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, and Robert C. Schneider, Deputy Attorney General, for Plaintiff and Respondent.

Defendant Lester Scott was convicted by jury of possession of cocaine base in violation of Health and Safety Code section 11350, subdivision (a). The court suspended imposition of sentence and placed defendant on two years' formal probation under the provisions of Proposition 36, to receive substance abuse treatment. On appeal, defendant contends the court committed reversible error in violation of his Fourth Amendment right to be free of search and seizure when the court denied his motion to suppress (1) a rock of cocaine that was recovered after defendant dropped it down the back of his shirt, and (2) all statements made to the detaining officers. Additionally, defendant seeks our independent review of the in camera *Pitchess*[1] proceedings for discovery of police personnel records.

" '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. [Citations.]' " (*People v. Weaver* (2001) 26 Cal.4th 876, 924; *People v. Glaser* (1995) 11 Cal.4th 354, 362.) We find no error in the court's order denying the motion.

The suppression hearing consisted of the uncontradicted testimony of Los Angeles Police Officer Christina Fuentes, who was assigned to the Newton Division narcotics enforcement detail. Officer Fuentes testified that while she and another officer and a detective were observing a known narcotics location, at about 3:00 p.m. on November 10, 2010, they saw defendant riding his bicycle eastbound on East 47th Place, toward the location they were surveilling at 150 East 47th Place. They watched defendant ride his bicycle toward the rear of the location. The officers never lost sight of him, and they did not see him have any contact with anyone. The officers decided to contact defendant since they saw him go to the location they had previously investigated as a narcotics

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1 *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

location, so they followed defendant in their vehicle when he left the location, riding his bicycle westbound on East 47th Place. The officers drove past him, parked, got out of the car, identified themselves with their police badges and told defendant to stop as his bicycle approached alongside their vehicle. Officer Fuentes saw defendant drop down the back of his shirt a small, off-white, roundish rock resembling cocaine that he held in his fingers. Her partner, Detective Erik Armstrong, recovered the rock while it was still on defendant's person, lodged in his clothing at the back of his waistline. The officers did not display their guns when they told defendant to stop.

The trial court denied the motion to suppress on the ground that the defendant did not stop riding his bicycle until after the officers saw him drop the rock of cocaine down his shirt, at which point they were entitled to detain defendant to investigate what it was that he dropped down his shirt. The court explained its ruling as follows: "[T]he officers, after seeing the defendant go to what they believe is a known narcotic location, certainly have a right to have a consensual encounter with the defendant; doesn't sound like anything more than they stopped the car, got out, and showed badges. [¶] Before they really could have any kind of encounter, before the defendant gets off his bike, before he does anything, he puts the rock, which they see in his hand, behind his neck and down his shirt. At that point based on that movement and based on what they saw they certainly have a right to stop the defendant."

In ruling on defendant's motion, the court sat as trier of fact and appropriately judged the credibility of the witness and testimony proffered. (*People v. Superior Court* (1974) 10 Cal.3d 645, 649.) The trial court's findings in support of its ruling are fully supported by the testimony of Officer Fuentes. Moreover, based on a review of the record, we independently conclude the detention of defendant was reasonable within the meaning of the Fourth Amendment. In order for an investigative detention to withstand Fourth Amendment scrutiny, "the circumstances known or apparent to the officer must be such as would cause a reasonable law enforcement officer in a like position, drawing when appropriate on his or her training and experience, to suspect that criminal activity

has occurred, is occurring, or is about to occur and that the person to be stopped or detained is involved in the activity." (*People v. Conway* (1994) 25 Cal.App.4th 385, 389.) The officer must have " 'specific and articulable' " facts that are applicable to the particular suspect to be detained. (*People v. Perrusquia* (2007) 150 Cal.App.4th 228, 234.) Further, the "reasonable suspicion requirement is measured by an objective standard . . . ." (*People v. Conway*, at p. 388.)

The totality of the factual circumstances must be considered in determining the reasonableness of the detention. (*People v. Souza* (1994) 9 Cal.4th 224, 230; *United States v. Cortez* (1981) 449 U.S. 411, 417-418.) "An area's reputation for criminal activity is an appropriate consideration in assessing whether an investigative detention is reasonable under the Fourth Amendment" even though it may not form the sole basis upon which an individual is detained. (*People v. Souza*, at p. 240.) Whether or not an individual displays nervous or evasive behavior, including fleeing from law enforcement, is also appropriately considered. (*Illinois v. Wardlow* (2000) 528 U.S. 119, 124-125.) Simply because the circumstances presented to an officer might also be consistent with lawful behavior does not " 'deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, *the principal function of [police] investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal . . . .*' " (*People v. Souza*, at p. 233, italics added.)

Here, the totality of circumstances supported a reasonable suspicion that defendant possessed rock cocaine. The officers saw defendant ride his bicycle toward the back of a known narcotics location they were surveilling. They did not see him make a hand-to-hand transaction or have any other contact with anyone, but they were entitled to stop him for a consensual encounter. There was no evidence the officers behaved in a way that may be fairly characterized as a seizure until after they saw defendant drop the rock down his back. They drove ahead of defendant, parked, got out of the vehicle, displayed their badges, and told defendant to stop. There was no evidence that defendant complied with the order to stop or dismounted his bicycle until after the officers saw him drop the

rock of cocaine down his shirt. Substantial evidence supports the trial court's finding that he did *not* stop riding his bicycle until after he dropped the rock. We agree with the trial court that the officers had probable cause to detain defendant after they saw him drop the rock down his shirt. There is no evidence supporting defendant's argument that the officers detained him *before* he dropped the rock by arriving suddenly, surrounding him and waving their badges in the air.

Lastly, we conducted an independent examination of the *Pitchess* proceedings to determine whether any responsive documents were wrongly withheld. Such a review is authorized under *People v. Mooc* (2001) 26 Cal.4th 1216. We have reviewed the record of the trial court proceedings, including a sealed reporter's transcript of the trial court's in camera review of Officer Fuentes's and Detective Armstrong's records. Based upon our review of the record, we conclude the trial court's orders concerning the disclosure of *Pitchess* materials were correct.

DISPOSITION

The judgment is affirmed.

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GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.