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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. TIFFANY DANIELL MOORER, Defendant and Appellant.	B240980 (Los Angeles County Super. Ct. No. TA122455)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ronald V. Skyers, Judge. Affirmed.

Richard L. Fitzer, 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, Assistant Attorney General, and Victoria B. Wilson, Erika D. Jackson and Brendan Sullivan, Deputy Attorneys General, for Plaintiff and Respondent.

Tiffany Daniell Moorer appeals from the judgment entered after her plea of no contest to possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)), following the denial of a suppression motion (Pen. Code, § 1538.5). The court sentenced her to prison for three years, suspended execution of sentence, and placed her on formal probation for three years. We affirm the judgment.

FACTUAL SUMMARY

The record reflects that on March 13, 2012, appellant possessed 2.46 grams net weight of a solid substance containing cocaine base in Los Angeles County.[1]

ISSUE

Appellant claims the trial court erroneously denied her Penal Code section 1538.5 suppression motion.

DISCUSSION

The Trial Court Properly Denied Appellant's Suppression Motion.

1. *Pertinent Facts.*

a. *Suppression Hearing Evidence.*

Viewed in accordance with the usual rules on appeal (*People v. Leyba* (1981) 29 Cal.3d 591, 596-597), the evidence presented at the hearing on appellant's Penal Code section 1538.5 suppression motion established as follows. On March 13, 2012, Los Angeles County Sheriff's Deputy Jeff Lohmann, who had been a deputy for almost 12 years, was by himself on patrol. He testified as follows. Lohmann received a call and updates indicating several Black men with guns had been just south of 910 North Oleander and may have entered the house at that address. The call was from someone located one house south of the above address. A handling unit asked Lohmann and other deputies to check for suspects inside the house at 910 North Oleander.

Lohmann went to the house at 910 North Oleander and did "call outs." Lohmann testified three or four men exited. They did not have weapons.

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[1] These facts are reflected in the preliminary hearing transcript and probation report, neither of which was admitted into evidence at the hearing on appellant's Penal Code section 1538.5 suppression motion discussed *post.*

Lohmann, who was in uniform, believed someone with a gun might have entered the house. He entered it to conduct a protective sweep. After he entered, Lohmann and appellant saw each other. Lohmann was about 10 feet from appellant, who had exited a bedroom. Appellant was placing something in her bra.[2]

Lohmann ordered appellant at gunpoint to stop and to keep her hands in plain view. However, she kept fidgeting with what she was putting in her bra and appeared to be concealing something in her bra. Lohmann could not see the object and did not know what it was. He detained her.

Lohmann escorted appellant to Los Angeles County Sheriff's Deputy Terry Johnson, told Johnson what he had observed, and asked her to search appellant carefully because appellant had put something in her bra. No one found a gun on appellant.

Johnson, who had been a deputy for six years, testified as follows. About 2:00 p.m. on March 13, 2012, she received a call regarding about seven to eight persons with a gun. The location was 910 North Oleander in Compton. Johnson set up a perimeter around the house and Lohmann entered the house.

Johnson saw appellant exiting the house, apparently being escorted by Lohmann. Lohmann told Johnson that Lohmann saw appellant rummaging through one of the bedrooms, and Lohmann mentioned "possible narcotics possession" to Johnson. Because appellant had failed to exit the residence on her own, Lohmann asked Johnson to conduct a patdown search of appellant for weapons.

Johnson conducted a patdown search for weapons and felt a hard bulge in the right side of appellant's bra. The bulge felt like a small plastic bag containing a rock-like narcotic substance. Johnson had felt such bulges 50 to 70 times during prior narcotics arrests.

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[2] During cross-examination, Lohmann testified he did not write the police report, he reviewed it on the day of the hearing, and he brought to the prosecutor's attention that day that the report omitted the fact appellant had put something in her bra.

Johnson asked appellant what the object was. Appellant replied, " 'It was just laying there so I picked it up.' " Johnson asked if she could recover it. Appellant replied yes. Johnson recovered from appellant's bra a plastic baggy containing an off-white rock-like substance resembling rock cocaine.

During cross-examination, Johnson testified she routinely conducted patdown searches, and nothing else indicated appellant had a weapon. When Johnson felt the rock-like object, she knew what it was and it could not have been anything else. Johnson asked appellant what it was because Johnson always asked that question.

During redirect examination, the prosecutor asked if Johnson had any information appellant might be armed. Johnson replied, "[b]aggy clothing." Johnson also testified Lohmann told Johnson, "I think [appellant] stuffed dope in her bra." The prosecutor asked if that was why Johnson searched appellant, and Johnson replied the main reason she searched appellant was for weapons. We will present additional facts below where appropriate.

b. *Appellant's Suppression Motion and the Court's Ruling.*

Appellant filed a Penal Code section 1538.5 suppression motion. After the presentation of the above evidence at the hearing on the motion, appellant argued the deputies' entry into the house, detention of appellant, and search of appellant for weapons were unlawful. Appellant also argued the fact she put something in her bra did not mean deputies could search her for narcotics.

The prosecutor argued appellant had no privacy interest in the house, the *Harvey-Madden*[3] rule was inapplicable, and the issue was whether "Lohmann had seen [appellant] doing something that would give rise to probable cause to search [appellant] or to detain her for a possible weapons search and/or narcotics search." The prosecutor commented Lohmann saw appellant exiting the room and stuffing something into her bra,

[3] (*People v. Madden* (1970) 2 Cal.3d 1017; *People v. Harvey* (1958) 156 Cal.App.2d 516.)

Lohmann told this to Johnson, and Lohmann told Johnson that appellant might be concealing narcotics.

The prosecutor also argued that based on what Lohmann told Johnson, Johnson frisked appellant's outer clothing, primarily for weapons. The prosecutor discussed the evidence of what then happened and maintained that, under the circumstances, Johnson had probable cause to search appellant's bra and retrieve narcotics.

The court indicated as follows. The deputies had reason to approach the house based on the broadcast that there were males with guns. There was no *Harvey-Madden* issue. The deputies lawfully entered the house for weapons and public safety. Because Lohmann ordered appellant to put her hands up and appellant continued her actions, the deputies had a right to detain and search her. The court initially had been concerned that "the fact of the search for weapons or some other thing was not mentioned in the police report," but testimony concerning the omitted matters ultimately had been presented at the hearing. The court denied appellant's suppression motion.

2. *Analysis.*

Appellant claims as previously indicated. She argues the warrantless search of the house was unlawful because it was not justified as a protective sweep or under a public safety rationale, the People failed to comply with the *Harvey-Madden* rule, deputies unlawfully detained appellant and unlawfully conducted a patdown search of her, and those unlawful actions rendered involuntary her later consent to the removal of the object from her bra. We reject appellant's claim.

When reviewing the denial of a defendant's Penal Code section 1538.5 suppression motion, we defer to the trial court's express and implied factual findings to the extent they are supported by substantial evidence, and exercise our independent judgment as to whether a search or seizure was reasonable under the Fourth Amendment based on the facts so found. (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

As to the alleged unlawful warrantless search of the house, a defendant has the burden of demonstrating a privacy interest in the place searched. (*People v. Jenkins* (2000) 22 Cal.4th 900, 972.) Based on the pertinent facts in the record of the suppression

hearing, appellant was simply in the house. The mere fact a person is inside premises, such as a house, does not give the person a Fourth Amendment privacy interest in the premises. (*People v. Ayala* (2000) 23 Cal.4th 225, 255 (*Ayala*); *People v. Ooley* (1985) 169 Cal.App.3d 197, 201-203; *Rakas v. Illinois* (1978) 439 U.S. 128, 142-143 [58 L.Ed.2d 387].) Appellant concedes in her reply brief that "she has no standing to challenge the search of the house itself, . . ."[4] We accept the concession. Appellant has failed to demonstrate she had a privacy interest in the house. She may not challenge the search of the house.

It follows there is no need to address the issues of whether the search of the house was justified as a protective sweep or was justified under a public safety rationale. Nor, in particular, is there any need to address, with respect to any search of the house, the issues of whether any protective sweep was lawfully based on a reasonable belief someone inside posed a danger to deputies (see *People v. Ledesma* (2003) 106 Cal.App.4th 857, 863, 866), whether any entry under a public safety rationale was lawfully based on a reasonable belief someone inside was in distress and needed assistance (see *People v. Ray* (1999) 21 Cal.4th 464, 470), or whether the People satisfied the *Harvey-Madden* rule.

Moreover, notwithstanding appellant's argument to the contrary, her failure to demonstrate a privacy interest in the house precludes her from complaining that the alleged violation of the constitutional rights of another directly caused appellant's detention and the frisk of her outer clothing. (Cf. *People v. Madrid* (1992) 7 Cal.App.4th 1888, 1894-1896 (*Madrid*).)

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[4] "[S]ince *Rakas v. Illinois* (1978) 439 U.S. 128 . . . , the United States Supreme Court has largely abandoned use of the word 'standing' in its Fourth Amendment analyses. [Citation.] It did so without altering the nature of the inquiry: whether the defendant, rather than someone else, had a reasonable expectation of privacy in the place searched or the items seized." (*Ayala, supra,* 23 Cal.4th at p. 254, fn. 3.)

In this regard, appellant is really arguing that her detention and the outer frisk of her clothing were fruit of the poisonous tree of the alleged unlawful search of the house. However, "the general principles of law on standing, as articulated by the high court, permit a defendant to prevail on a 'fruit of the poisonous tree' claim only if he or she has standing regarding the violation which constitutes the poisonous tree . . . . [Citation.] Were we to accept defendant's reasoning, we would be compelled to ignore established precedent on the question of standing and instead focus on defendant's privacy interest in [the poisonous fruit] rather than on her privacy interest in the [poisonous tree]." (*Madrid, supra,* 7 Cal.App.4th at p. 1898.) In sum, the fact the alleged unlawful search of the house, in which appellant lacked a privacy interest, may have led to appellant's detention and the frisk of her outer clothing is irrelevant. (Cf. *id.* at pp. 1895-1898.)

Appellant's reliance on the fact that police who stop a vehicle seize the driver and any passenger is misplaced. It is one thing to acknowledge that when police stop a vehicle, the driver and any passenger are *seized* for purposes of the Fourth Amendment, in part because the stopping of the vehicle curtails the travel of both occupants. (*Brendlin v. California* (2007) 551 U.S. 249, 256-257.) It is another thing to argue, as appellant essentially does, that when police, allegedly, unlawfully search a house in which a defendant lacks a privacy interest, and that search (i.e., entry into the house) per se does not curtail the travel of anyone, that the defendant may nonetheless challenge the search of the house because it impacts a *later* seizure and search of the defendant inside the house. That is not the law.

As to the alleged unlawful detention of appellant, a detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts which, considered in light of the totality of the circumstances, provide an objective manifestation that the person detained may be involved in criminal activity. (*People v. Souza* (1994) 9 Cal.4th 224, 231.) Moreover, if an objectively reasonable basis for a detention exists, whether an officer actually relies on that basis to detain, and the officer's subjective intent or motivation in detaining, are irrelevant. (Cf. *People v. Valencia* (1993) 20 Cal.App.4th 906, 915-918.)

There was substantial evidence as follows. Lohmann received a call that there were men with a gun, and this escalated to a call that there were men with guns. He arrived at 910 North Oleander and there were in fact several men in the house. That is, once deputies contained the house and called for people to exit, multiple men exited. However, none of the men had a weapon.

After Lohmann entered the house, he saw appellant. She was still in the house despite the facts deputies had contained the house and repeatedly had ordered everyone to exit. An objectively reasonable basis then existed for Lohmann to detain appellant for willfully resisting, delaying, or obstructing a peace officer in the discharge or attempted discharge of the peace officer's duties by refusing to comply with the deputies' orders that everyone exit. (Cf. *Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 518; *People v. Allen* (1980) 109 Cal.App.3d 981, 985-986.)

Moreover, Lohmann ordered appellant at gunpoint to keep her hands in plain view, but she ignored the order, continued fidgeting with what she was putting in her bra, and appeared to be concealing something there. An objectively reasonable basis then existed for Lohmann to detain appellant for violating Penal Code section 148, subdivision (a)(1) by refusing to comply with Lohmann's order to keep her hands in plain view. (Cf. *In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1330-1331; Pen. Code, § 148, subd. (a)(1).) Lohmann lawfully detained appellant.

As to the *Harvey-Madden* rule, appellant argues the People failed to comply with it by failing to produce at the hearing the caller or the dispatcher who received the alleged call. (See *In re Richard G.* (2009) 173 Cal.App.4th 1252, 1256 (*Richard G.*).) We assume the rule applies to detentions. (*Id.* at p. 1259.)

However, there was substantial evidence as follows. The call allegedly originated with someone who was in the yard of the residence just south of the residence at 910 North Oleander. The caller was anonymous but the location from which the call had been placed had been identified and was thus susceptible to verification. No evidence was presented that no such caller existed or no such call had been made.

Lohmann and Johnson were in separate vehicles. Each received a call and went to 910 North Oleander. Lohmann also received a call from a handling unit and received updates. Multiple deputies received multiple calls in different units *while* they were proceeding to the scene. This is not then a case involving the concern animating the *Harvey-Madden* rule, i.e., a deputy falsely reporting a criminal offense, then acting on a dispatcher's broadcast pertaining to it. Prior to the detention of appellant, Lohmann determined several men in fact had been in the house but none had weapons, and appellant's furtive movements in connection with her bra after Lohmann ordered her to keep her hands in plain view gave Lohmann reason to believe a gunman referred to in the call had given a gun to appellant. The fact the dispatcher received a call was thus corroborated.

"Where . . . the evidence and the reasonable inferences flowing from it show that the police dispatcher actually received a telephone report creating a reasonable suspicion of criminal wrongdoing, it is not necessary to require strict compliance with the '*Harvey-Madden'* rule." (*Richard G., supra*, 173 Cal.App.4th at p. 1259.) In the present case, the trial court reasonably could have concluded from the facts as they existed before Lohmann detained appellant that the dispatcher actually received a call that created a reasonable suspicion of wrongdoing. No *Harvey-Madden* error occurred. (Cf. *Richard G., supra,* 173 Cal.App.4th at pp. 1258-1260; *People v. Gomez* (2004) 117 Cal.App.4th 531, 541 (*Gomez*).)

As to the frisk of appellant's outer clothing, an officer may conduct a reasonable search for weapons when the officer has reason to believe a suspect is armed and dangerous. The issue is whether a reasonably prudent person in the totality of the circumstances would be warranted in the belief that his or her safety was in danger. (*People v. Avila* (1997) 58 Cal.App.4th 1069, 1074 (*Avila*).) When that standard is satisfied, an officer may perform a frisk of the suspect's outer clothing for weapons. (*People v. Mosher* (1969) 1 Cal.3d 379, 394; *In re H.M.* (2008) 167 Cal.App.4th 136, 143.)

There was substantial evidence that, before Johnson frisked appellant's outer clothing, the following occurred. Deputies had received a call concerning men with a gun(s). The handling unit indicated possible suspects may have entered the location, and Lohmann received an update that several male Blacks had a gun just south of 910 North Oleander. Lohmann went to the address, deputies contained the house, and repeatedly ordered everyone to exit. Several males exited, but none had guns.

Lohmann entered the house and saw appellant. It appeared to Lohmann that appellant was placing something in her bra. She ignored his order at gunpoint to keep her hands in plain view, and she appeared to be concealing something in her bra. Given all that previously had occurred, Lohmann reasonably could have believed one or more of the gunman referred to in the call had given the gun to appellant. Lohmann thus had reason to believe appellant was armed and dangerous. Lohmann told the above facts to Johnson and told her to search appellant carefully because appellant had put something in her bra.

According to Johnson, she received a call that there were seven to eight persons with a gun at 910 North Oleander. At the location, Lohmann told Johnson that appellant had been rummaging through one of the bedrooms, and Lohmann mentioned possible narcotics possession. Appellant had failed to exit the house, so Lohmann asked Johnson to conduct a patdown search of appellant for weapons, and Johnson did so. We conclude based on the collective knowledge of Lohmann and Johnson that Johnson lawfully frisked appellant's outer clothing. (Cf. *Avila, supra,* 58 Cal.App.4th at p. 1074; see *Gomez, supra,* 117 Cal.App.4th at p. 541.) We reject appellant's argument that her consent to the removal of the suspected cocaine was involuntary because deputies unlawfully detained and searched her. No such unlawful detention or unlawful search occurred. We also reject appellant's suggestion Johnson testified she routinely conducted patdown searches absent reason to believe a defendant was armed and dangerous; Johnson never so testified.

Finally, even if appellant did not consent to the removal of the suspected cocaine, there was substantial evidence as follows. Lohmann told Johnson that appellant possibly possessed narcotics and that Lohmann thought appellant had stuffed narcotics in her bra. Johnson conducted a frisk of appellant's outer clothing, felt a hard object, and, based on many prior similar experiences, it was immediately apparent to Johnson that the object was a baggy of suspected rock cocaine. Johnson testified she knew what the object was, and it could not have been anything else.

We conclude under the circumstances in this case, including the collective knowledge of Lohmann and Johnson, that when Johnson felt the object, she had probable cause to believe appellant possessed narcotics, and the search of appellant's bra was justified as a search incident to her arrest. (Cf. *Gomez, supra,* 117 Cal.App.4th at p. 538; *People v. Dibb* (1995) 37 Cal.App.4th 832, 835-837.) The trial court properly denied appellant's suppression motion.

DISPOSITION

The judgment is affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

CROSKEY, J.