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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. STEVE PAUL SANCHEZ, Defendant and Appellant.	2d Crim. No. B281690 (Super. Ct. No. 2013006591) (Ventura County)

Steve Paul Sanchez was convicted by jury of weapon and drug charges. He contends that the evidence against him was obtained in an illegal search. (U.S. Const., 4th Amend.)[1] The trial court denied his motion to suppress the evidence.

We affirm. Appellant was stopped for speeding. He became combative during the ensuing investigation of his sobriety and was arrested. The incriminating evidence came from a lawful search of appellant when he was arrested. We modify the judgment by staying appellant's sentence on count 3

[1] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

(possession of a controlled substance), which is duplicative of the sentence imposed on count 1 (possession of a controlled substance with a firearm). (Pen. Code, § 654.)

FACTS[2]

Port Hueneme Police Officer Baltazar Tapia has been a peace officer for 17 years. While patrolling at night in early 2013, he saw a Monte Carlo traveling in the opposite direction at a high rate of speed. Tapia's patrol car does not have radar. He made a U-turn to follow the Monte Carlo. After trailing the car for 40-50 yards, Tapia determined that the driver was traveling 60 miles per hour; the speed limit is 45 miles per hour.

Tapia turned on his siren and overhead lights to stop the speeder and issue a citation. The Monte Carlo pulled to the curb. Appellant was at the wheel. Tapia asked appellant to produce his driver's license, registration and proof of insurance. As he took the documents, Tapia saw that appellant's hands were shaking; Tapia thought this was "probably just nervousness." He did not notice any alcohol odor coming from appellant's car.

After checking appellant's records, Tapia asked appellant if he had used drugs or alcohol. Tapia explained, "It's basically because he was nervous. I wanted to see if there was anything else that he might be trying to hide. I asked him if he would close his eyes, which he did. Once he closed his eyes, I noticed that he had eyelid tremors." Appellant acquiesced.

Tapia is an expert and instructor in the field of drug recognition. He has arrested over 200 people for being under the influence. Based on his training and experience, Tapia believed that appellant's shaking hands and eyelid tremors were signs of stimulant use. He wanted to be sure that appellant was able to

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[2] The facts surrounding appellant's detention and arrest are taken from the transcript of the suppression hearing.

drive. Tapia shined his pen light into appellant's eye and observed no reaction in the pupil to the light stimulus. At that point, Tapia suspected that appellant was under the influence of a controlled substance.

Tapia testified that nervousness, tremors, and non-reaction to light are not sufficient bases for arrest. Therefore, he asked appellant to step out of the car for field sobriety tests. Appellant refused and became argumentative. After three refusals, Tapia opened the car door. When appellant stood up, Tapia asked him to go to the curb. Appellant did not comply. Tapia warned appellant that he risked arrest for impeding the investigation. Appellant took "a fighting stance," raising both arms with closed fists. Tapia used a taser to subdue appellant.

Tapia arrested appellant for failing to cooperate with an investigation. After being handcuffed, appellant was searched. A handgun loaded with one round was in the front waistband of appellant's pants; a magazine for the weapon, cash, and rock cocaine were found in his pocket. At the police station, appellant showed no symptoms of intoxication and his eye pupils dilated normally; however, his urine tested positive for cocaine and marijuana.

PROCEDURAL HISTORY

Appellant was charged in a four-count information. He moved to suppress the evidence obtained by the police. (Pen. Code, § 1538.5.) The motion was denied.

A jury convicted appellant of felony possession of a controlled substance with a gun (count 1); felony possession of a firearm by a felon (count 2); possession of a controlled substance (count 3); and possession of ammunition by a felon (count 4). (Health & Saf. Code, §§ 11370.1, subd. (a), 11350, subd. (a); Pen. Code, §§ 29800, subd. (a)(1), 30305, subd. (a)(1).) The court found true that appellant has served prior prison terms. (Pen. Code,

§ 667.5, subd. (b).) Appellant was sentenced to an aggregate term of five years, eight months including a one year sentence in county jail to run concurrently with the prison sentence ordered in count 1.

DISCUSSION

1. Police Had a Reasonable Suspicion to Stop Appellant for Speeding and Investigate Whether He Was Driving Under the Influence

The trial court found that, in combination, appellant's nervousness, tremors, and non-reaction to light were sufficient to give Officer Tapia a reasonable suspicion that appellant was under the influence; he had a public safety duty to investigate appellant's sobriety. In light of this duty to investigate, the court denied appellant's motion to suppress evidence found during the search of his clothing, following his arrest.

"'"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."'" (*People v. Suff* (2014) 58 Cal.4th 1013, 1053.)

Appellant contends that each step of his detention violated the Fourth Amendment. He argues that Officer Tapia lacked a reason for making a traffic stop in the first place then exceeded the bounds for investigating a speeding violation. We conclude that the traffic stop and investigation did not exceed constitutional limits.

First, Officer Tapia's action was justified at its inception, when he stopped appellant for a speeding violation. For police, "[t]he foremost method of enforcing traffic and vehicle safety regulations . . . is acting upon observed violations." (*Delaware v.*

Prouse (1979) 440 U.S. 648, 659.) A motorist may be stopped on "reasonable suspicion" that traffic safety laws were violated. (*Navarette v. California* (2014) __ U.S. __ [188 L.Ed.2d 680, 689]; *People v. Wells* (2006) 38 Cal.4th 1078, 1082-1083.) When inquiring into the reasonableness of an initial stop, the courts determine whether the officer's action was justified at its inception, based on specific, articulable facts. (*Terry v. Ohio* (1968) 392 U.S. 1, 19-22; *Wells*, *supra*, 38 Cal.4th at p. 1083.)

Appellant argues that Tapia did not reasonably suspect a speeding violation, so there was no basis for a traffic stop. Appellant reasons that Tapia did not pace appellant's car for a sufficient distance to determine his speed, nor did Tapia state that his cruiser's speedometer was recently calibrated. The case law does not support appellant's position.

An officer may stop a car based on a visual estimate of speed. The stop does not violate the Fourth Amendment if the officer observes the vehicle traveling 10-15 miles an hour over the limit, while briefly pacing the speeder. (*People v. Nice* (2016) 247 Cal.App.4th 928, 934, 936, 943.) The officer's "firsthand observations of the . . . car as he pursued it, his pertinent training and experience, and the estimated speed differential, comprise sufficient objective and articulable facts to support the trial court's finding of reasonable suspicion that defendants' vehicle was traveling above the speed limit for the residential area." (*Id.* at p. 943. Accord: *People v. Ramirez* (1997) 59 Cal.App.4th 1548, 1551-1555 [finding sufficient cause for a traffic stop by an officer based on a colleague's report that the defendant was traveling 40-45 miles per hour in an area limited to 25, though the officer did not use radar or check his speedometer].)

Here, Tapia determined that appellant was speeding, based on the officer's 17 years of experience, his observation that appellant drove by at a high rate of speed, and by pacing

appellant for 40 to 50 yards. Appellant was driving significantly in excess of the legal speed limit. None of the cases cited by appellant require that an officer pace a speeder for any particular distance to determine whether traffic laws are being violated. Tapia's estimate of appellant's speed is sufficiently grounded in objective facts to constitute reasonable suspicion that appellant was speeding, justifying a traffic stop.

Second, Officer Tapia's investigation was reasonable under the circumstances. When a traffic stop is made, police may order the occupants out of the car. (*Arizona v. Johnson* (2009) 555 U.S. 323, 330-331.) The offender may be detained at the scene for as long as it takes officers to discharge their duties, and may be asked "about matters unrelated to the traffic stop." (*People v. Tully* (2012) 54 Cal.4th 952, 980-981.) Here, Tapia detained appellant for one to two minutes—after checking his records—to look at his eyes for signs of drug use. This was not an unduly prolonged stop.

A traffic stop may reveal wholly unrelated criminal activity. (*Colorado v. Bannister* (1980) 449 U.S. 1, 3-4 [police may seize stolen items seen inside a car stopped for speeding].) For example, during a routine traffic stop, an officer may observe that the driver is "nervous and fidgety" and has dilated eye pupils, justifying further investigation, questioning and testing. (See *People v. Nice*, *supra*, 247 Cal.App.4th at pp. 934-935.) A speeding violation may segue into an investigation for driving under the influence. (*People v. Hardacre* (2004) 116 Cal.App.4th 1292, 1295, 1300 [motorist stopped for speeding who shows signs of intoxication and fails field tests may be arrested for driving under the influence].) Even a parking infraction may serve as the basis for an investigatory traffic stop that discloses illegal drugs. (*People v. Bennett* (2011) 197 Cal.App.4th 907, 912-914.)

Officer Tapia is a drug recognition expert and instructor. After stopping appellant for speeding, he observed appellant's nervousness, shaking hands, eyelid tremors, and non-reaction to light stimulus. The trial court credited Tapia's unrefuted testimony that these are, in combination, signs of stimulant use impacting the central nervous system. The reasonable suspicions articulated by an experienced officer demanded further investigation with field sobriety tests to determine whether appellant was too impaired to drive safely. The evidence supports a conclusion that appellant was properly detained and asked to leave his car to perform these tests.

A detainee who acts suspiciously during a traffic stop, causing the officer to fear for his safety, may be searched. (See *People v. Superior Court (Brown)* 111 Cal.App.3d 948, 954-956 [person stopped to be given a traffic citation behaved peculiarly and resisted the stop; when a pat down search uncovered a gun in his waistband, he could be convicted as a felon in possession of a firearm].) Here, appellant refused three requests to leave his car for field sobriety tests, raised his fists, took a threatening "fighting stance," and was subdued with a taser.

Under the circumstances, Tapia was warranted in the belief that his safety was in danger when he searched appellant and removed a gun from his waistband. (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1081-1082; *In re H.M.* (2008) 167 Cal.App.4th 136, 142-144.) Even before he became combative, appellant's refusal to leave his car for field sobriety tests gave Tapia probable cause to arrest appellant for driving under the influence. (*Marvin v. Dept. of Motor Vehicles* (1984) 161 Cal.App.3d 717, 719-720 [motorist suspected of intoxication could be arrested when she refused to leave the car for sobriety tests].) Once there is cause to arrest, appellant could be searched and the drugs found on him seized. (*United States v. Robinson* (1973) 414

U.S. 218, 220-223, 234-236 [heroin seized during pat down of a motorist arrested for driving with a revoked license].)

2. The Sentence on Count 3 Must Be Stayed

Appellant argues that his conviction on count 3 (possession of a controlled substance) is indivisible from his conviction on count 1 (possession of a controlled substance with a firearm); both crimes were committed contemporaneously. (Pen. Code, § 654; *People v. Williams* (2009) 170 Cal.App.4th 587, 645-646.) Respondent agrees that appellant cannot be separately punished for multiple violations arising from an indivisible course of action. Accordingly, the one-year sentence in count 3 must be stayed pursuant to Penal Code section 654.

DISPOSITION

The judgment is modified to impose a one-year sentence on count 3 then stay execution of that sentence. The trial court is directed to send the Department of Corrections a new abstract of judgment reflecting this modification. As so modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Nancy L. Ayers, Judge

Superior Court County of Ventura

Linda L. Currey, 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, Scott A. Tarlye, Supervising Deputy Attorney General, and Viet H. Nguyen, Deputy Attorney General, for Plaintiff and Respondent.