Filed 4/13/17 P. v. Johnson CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. RHAQUAN JOHNSON, Defendant and Appellant.	B276850 (Los Angeles County Super. Ct. No. BA445288)

APPEAL from orders of the Superior Court of Los Angeles County, Dennis J. Landin, Judge. Affirmed.

Alex Coolman, 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, Victoria B. Wilson, Supervising Deputy Attorney General, for Plaintiff and Respondent.

Defendant Rhaquan Johnson pleaded guilty to carrying an unregistered, loaded handgun, in violation of Penal Code section 25850, subdivision (a).[1] Imposition of sentence was suspended, and defendant was placed on probation for three years on various terms and conditions.

Defendant presents two issues on appeal. First, he argues the trial court erred by denying his motion to suppress evidence pursuant to Penal Code section 1538.5 because the arresting officers effected a detention without reasonable suspicion by "aggressively intercepting his path of travel." Second, he argues the trial court erred by denying an in-camera review of peace officer personnel records under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). We affirm.

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

STATEMENT OF FACTS FROM DEFENDANT'S MOTION TO SUPPRESS PURSUANT TO PENAL CODE SECTION 1538.5

Prosecution Evidence

On March 26, 2016, at approximately 5:00 p.m., defendant was approached by uniformed Los Angeles Police Department Officers Pedersen[2] and Osteen while defendant and another male were walking on a public sidewalk in a high-crime neighborhood. Defendant was walking northbound on the sidewalk while the officers were driving southbound on the street. All parties were on the same side of the road.

Officer Pedersen's attention was drawn to defendant because he was wearing a hooded sweatshirt when the temperature was "in the high 70's." The sweatshirt covered defendant's waistband. Defendant wore a cast on his arm. Officer Pedersen wanted to speak to defendant, so he pulled the police vehicle to the curb, offset from defendant, who was still on the sidewalk. The officers never activated their siren or bullhorn. The officers exited their vehicle and walked toward defendant and the other male. The officers did not obstruct defendant's path, pull out their weapons, or issue any orders or commands.

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[2] Officer Pedersen was the witness for the prosecution at the hearing on defendant's motion to suppress evidence.

When approximately eight feet away, Officer Pedersen asked if he could speak to defendant. Defendant was "very cooperative" when Officer Pedersen approached, affirming the officers could speak to him. Defendant removed his wallet from his rear pocket and stated, "You can't search me." Officer Pedersen then asked if defendant was on parole or probation. Defendant said no and restated the police could not search him. In response, Officer Pedersen asked defendant if he had any drugs or weapons. Defendant said he did not.

Officer Pedersen asked defendant if he had marijuana. Defendant stated no, but that he had "Oxy," street vernacular for Oxycodone, and his demeanor changed from cooperative to "extremely nervous." Defendant's hands were visibly shaking.

Aware that Oxycodone is sold illegally on the street, Officer Pedersen decided to conduct a pat-down search pursuant to a narcotics investigation. During the course of the pat-down, Officer Pedersen felt the distinctive outline and weight of a handgun in defendant's front right pant pocket. Officer Pedersen removed a semiautomatic handgun that contained nine live rounds. Defendant was arrested for possession of an unregistered firearm.

Defense Evidence

Defendant testified at the suppression hearing, disputing only some aspects the prosecution's evidence.

Defendant testified the police vehicle drove onto the sidewalk, "like blocking, obstructing [their] way," and the officers jumped out of the car and asked how it was going and if defendant had any warrants or arrests. Defendant said no and that he did not consent to any searches. Although defendant was not cornered and nothing prevented him from walking away, he assumed by the way the officers approached that he was not free to leave. Officer Pedersen asked defendant if he was on probation. Defendant stated no and handed the officer his wallet. After going through the wallet, Officer Pedersen began to pat-down defendant, and while doing so asked if defendant had drugs or weapons, and defendant stated no, but that he had a "prescription for Oxycodone."

Trial Court Findings

The court found Officer Pedersen's testimony "reasonable and credible," noting also that "even young people don't feel that they can walk away from police when confronted . . . . But the law under the case of [*People v. Franklin* (1987) 192 Cal.App.3d 935 (*Franklin*),] produced by the People suggested the subjected [sic] feeling of the citizen is not the most relevant factor that -- here the defendant could have physically walked away." The court then stated that "the officer's testimony that the defendant was nervous, and after he said he had Oxy, which is the slang for Oxycodone, a controlled substance that is often illegally sold

in that area, allowed the officer to commence a narcotics investigation. In doing so, he was entitled to conduct a pat-down search for officer safety."

DISCUSSION

Defendant's Motion to Suppress

Defendant filed a motion under section 1538.5 to suppress evidence of the firearm, claiming the officers searched him without a warrant, consent, or probable cause. Specifically, defendant claims the initial encounter with officers constituted an unlawful detention.[3] Defendant argues the officers violated his Fourth Amendment rights by using their vehicle to "aggressively intercept [defendant] as he walked along the sidewalk." We disagree.

"'In ruling on a motion to suppress, the trial court finds the historical facts, then determines whether the applicable rule of law has been violated. "We review the court's resolution of the factual inquiry under the deferential substantial-evidence standard. The ruling on whether the applicable law applies to the facts is a mixed question of law and fact that is subject to independent review. [Citation.]" (*People v. Saunders* (2006) 38 Cal.4th 1129, 1134 (*Saunders*).)' ([*People v.*] *Hernandez* [(2008)] 45 Cal.4th

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[3] Defendant does not argue that the pat-down incident to the investigation was unlawful.

[295,] 298–299.)" (*People v. Greenwood* (2010) 189 Cal.App.4th 742, 745–746.)

"For purposes of Fourth Amendment analysis, there are basically three different categories or levels of police 'contacts' or 'interactions' with individuals, ranging from the least to the most intrusive. First, there are . . . 'consensual encounters' [citation], which are those police-individual interactions which result in no restraint of an individual's liberty whatsoever—i.e., no 'seizure,' however minimal—and which may properly be initiated by police officers even if they lack any 'objective justification.' [Citation.] Second, there are what are commonly termed 'detentions,' seizures of an individual which are strictly limited in duration, scope and purpose, and which may be undertaken by the police 'if there is an articulable suspicion that a person has committed or is about to commit a crime.' [Citation.] Third, and finally, there are those seizures of an individual which exceed the permissible limits of a detention, seizures which include formal arrests . . . ." (*Wilson v. Superior Court* (1983) 34 Cal.3d 777, 784.)

The Supreme Court has held "that the Fourth Amendment permits police officers to approach individuals at random in airport lobbies and other public places to ask them questions . . . so long as a reasonable person would understand that he or she could refuse to cooperate." (*Florida v. Bostick* (1991) 501 U.S. 429, 431.) "The citizen participant in a consensual encounter may leave, refuse to answer questions or decline to act in the manner requested

by the authorities." (*Franklin*, *supra*, 192 Cal.App.3d at p. 941.) "'Only when the officer, by means of physical force or show of authority, in some manner restrains the individual's liberty, does a seizure occur. [Citations.] "[I]n order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter." [Citation.] This test assesses the coercive effect of police conduct as a whole, rather than emphasizing particular details of that conduct in isolation. [Citation.] Circumstances establishing a seizure might include any of the following: the presence of several officers, an officer's display of a weapon, some physical touching of the person, or the use of language or of a tone of voice indicating that compliance with the officer's request might be compelled.' (*In re Manuel G.* [(1997)] 16 Cal.4th [805,] 821.)" (*People v. Garry* (2007) 156 Cal.App.4th 1100, 1106 (*Garry*).)

"The test for the existence of a show of authority is an objective one and does not take into account the perceptions of the particular person involved. (*In re Manuel G.*, *supra*, 16 Cal.4th at p. 821.) The test is 'not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer's words and actions would have conveyed that to a reasonable person.' (*California v. Hodari D.* (1991) 499 U.S. 621, 628.)" (*Garry*,

supra, 156 Cal.App.4th at p. 1106.) "This includes an examination of both an officer's verbal *and* nonverbal actions in order to 'assess[] the coercive effect of police conduct as a whole, rather than emphasizing particular details of that conduct in isolation.' [Citation.]" (*Id.* at p. 1110.)

Substantial evidence supports the trial court's finding that the officers did not restrain defendant's liberty "by means of physical force or show of authority." Officer Pedersen's testimony establishes that the police vehicle was parked at the curb on the lawful side of the road. Officer Pedersen testified the police vehicle came to a stop, the officers exited the vehicle, and then they approached defendant.

The officers engaged defendant in conversation on a public sidewalk when they were eight feet away. The officers asked to speak to defendant—they did not draw or place their hands on any weapons, and they did not issue any commands. Defendant could have refused to speak to the officers and continued walking with his companion. (See *Bostick*, *supra*, 501 U.S. at p. 437 ["Where the encounter takes place is one factor, but it is not the only one. And . . . an individual may decline an officer's request without fearing prosecution"]; *Franklin*, *supra*, 192 Cal.App.3d at p. 941.)

When defendant agreed to speak with the officers, they inquired if he was on probation or parole. "Where a consensual encounter has been found, police may inquire into the contents of pockets (*People v. Epperson* (1986) 187

Cal.App.3d 115, 118–120); ask for identification (*People v. Gonzales* (1985) 164 Cal.App.3d 1194, 1196–1197); or request the citizen to submit to a search (*People* v. *Profit* (1986) 183 Cal.App.3d 849, 857, 879–880). It is not the nature of the question or request made by the authorities, but rather the manner or mode in which it is put to the citizen that guides us in deciding whether compliance was voluntary or not." (*Franklin*, *supra*, 192 Cal.App.3d at p. 941.)

Defendant's reliance on *People v. Jones* (1991) 228 Cal.App.3d 519 (*Jones*) is misplaced. The officer in *Jones* suddenly confronted the defendant by parking his police car diagonally against traffic on the wrong side of the road. The officer got out of the vehicle and asked the defendant to """[s]top. Would you please stop."""" (*Id.* at pp. 522–523.) The aggressive stop and assertive language present in *Jones* are lacking in this case.

Defendant's Motion for Peace Officer Personnel Records

The declaration of defense counsel submitted in support of defendant's request for disclosure of peace officer personnel records asserted that the police report omitted the facts that (1) defendant exhibited a "visible injury," and (2) defendant had advised the officers that his medication was prescribed. The declaration stated that these omissions

were made to justify an illegal search.[4] The declaration also distinguished defendant's claim that he told the officers he had prescription "Oxycodone" rather than "Oxy." The trial court denied the motion on the basis that the declaration was insufficient to warrant an in-camera review of the records. Defendant argues the trial court erred in denying his motion. We disagree.

"A trial court's ruling on a motion for access to law enforcement personnel records is subject to review for abuse of discretion." (*People v. Hughes* (2002) 27 Cal.4th 287, 330; accord, *People v. Memro* (1995) 11 Cal.4th 786, 832 ["Trial courts are granted wide discretion when ruling on a motion to discover such records"].) "'A trial court abuses its discretion when its ruling "fall[s] 'outside the bounds of reason.'" [Citation.]' [Citation.]" (*People v. Galan* (2009) 178 Cal.App.4th 6, 12 (*Galan*).)

A criminal defendant is entitled to discovery of peace officer personnel records if the information contained in the records is material to his ability to defend against the charge. (*Pitchess*, *supra*, 11 Cal.3d at pp. 537–538.) Legislation implementing the court's rule permitting discovery (§§ 832.5, 832.7, 832.8; Evid. Code, §§ 1043–1047) balances the accused's need for disclosure of relevant information against a law enforcement officer's legitimate

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[4] Defense counsel also alleged the officers "create[d] the necessity for a narcotics investigation in order to justify an[] illegal search." Defendant no longer relies on this allegation on appeal.

expectation of privacy in his or her personnel records. A defendant, by written motion, may obtain information contained in a peace officer's personnel records if he establishes good cause to warrant an inquiry. (Evid. Code, § 1043, subd. (b)(3).)

To evince good cause, a defendant must "establish not only a logical link between the defense proposed and the pending charge, but also [] articulate how the discovery being sought would support such a defense or how it would impeach the officer's version of events." (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1021.) The information sought must be described with some specificity to ensure that the defendant's request is "limited to instances of officer misconduct related to the misconduct asserted by the defendant." (*Ibid.*) Counsel's affidavit must describe a factual scenario that would support a defense claim of officer misconduct. (*Id.* at pp. 1024–1025.) "That factual scenario, depending on the circumstances of the case, may consist of a denial of the facts asserted in the police report." (*Ibid.*) "In other cases, the trial court hearing a *Pitchess* motion will have before it defense counsel's affidavit, and in addition a police report, witness statements, or other pertinent documents. The court then determines whether defendant's averments, '[v]iewed in conjunction with the police reports' and any other documents, suffice to 'establish a plausible factual foundation' for the alleged officer misconduct and to 'articulate a valid theory as to how the information sought might be admissible' at trial." (*Id.* at p. 1025.)

"*Warrick* permits courts to apply common sense in determining what is plausible, and to make determinations based on a reasonable and realistic assessment of the facts and allegations." (*People v. Thompson* (2006) 141 Cal.App.4th 1312, 1318–1319 (*Thompson*).) "'[T]he information sought must be requested with sufficient specificity to preclude the possibility of a defendant's simply casting about for any helpful information.' [Citation.]" (*Garcia v. Superior Court* (2007) 42 Cal.4th 63, 70.) A plausible factual foundation "presents an assertion of specific police misconduct that is both internally consistent and supports the defense proposed to the charges." (*Thompson*, *supra*, at p. 1316.)

The trial court could reasonably conclude that the differences between the police report and the version of events in defense counsel's declaration are too trivial to compel a finding of good cause for review of the officers' personnel records. The constitutionality of the interaction between the officers and defendant is not affected by whether defendant had a visible hand injury, stated he had a prescription for Oxycodone, or that defendant referred to the drug as Oxycodone rather than "Oxy."

The initial consensual encounter matured into a detention at the time of the pat-down search. The validity of the detention and pat-down search was not impacted by any difference between the versions of the officers' report and defense counsel's declaration. Nothing in defense counsel's declaration alters the fact that the narcotics investigation

was based on defendant being in a high-crime area, wearing a sweatshirt on a warm day, and admitting to possessing a drug which Officer Pedersen knew was commonly sold on the street. These facts supported a detention and pat-down search. "A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity." (*People v. Souza* (1994) 9 Cal.4th 224, 231.) "If the facts known to the officer at the time of the detention make the detention objectively reasonable, the officer's subjective intent will not vitiate the detention." (*Giovanni B. v. Superior Court* (2007) 152 Cal.App.4th 312, 320 (*Giovanni B.*), citing *People v. Woods* (1999) 21 Cal.4th 668, 679–681; accord, *Giovanni B.*, *supra*, at p. 321 ["Giovanni cannot contest the validity of the stop and search by asserting the officers' *other* observations concerning suspected criminal activity were false and a subterfuge to support the stop"].)

This case presents similar issues as in *Giovanni B.*, as both involve motions which did not articulate how the officers' veracity would be admissible on whether they were permitted to conduct the pat-down searches of the defendants after they were detained. (*Giovanni B.*, *supra*,152 Cal.App.4th at 321.) Ultimately, defendant "does not state a nonculpable explanation for his presence in [a high-crime area], sufficiently present a factual basis for being singled out by the police, or assert any 'mishandling of

the situation' prior to his detention and arrest." (*Thompson*, *supra*, 141 Cal.App.4th at p. 1317.)

DISPOSITION

The trial court's orders of June 24, 2016, and July 22, 2016, are affirmed.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

KUMAR, J.*

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