Filed 5/8/17 P. v. Jackson CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. DERRICK LEE JACKSON, Defendant and Appellant.	B275879 (Los Angeles County Super. Ct. No. BA439445)

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

Maggie Shrout, 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, and Victoria B. Wilson, Supervising Deputy Attorney General, for Plaintiff and Respondent.

* * * * * *

Derrick Lee Jackson (defendant) appeals his conviction for carrying an unregistered, loaded firearm. He argues the trial court erred in denying his motion to suppress the handgun found during the search of his car. We conclude there was no error, and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

Late one evening in August 2015, defendant parked his car across several stalls in front of a marijuana dispensary that was closed for remodeling. Defendant was standing near the open rear driver's side door when a Los Angeles Police Department patrol car pulled into the parking lot. When two officers got out of the car and began to approach defendant, he closed the door and walked up to meet them.

After defendant acknowledged that the car was his, one of the officers looked through the car's windows and saw a green, leafy substance that looked like marijuana near the car's center console. That officer questioned defendant about the marijuana, and defendant said he had worked at the dispensary and also had a medical marijuana card. The officer then attempted to verify the car's ownership, and asked defendant where his registration paperwork was located. Defendant said it was behind the rearview mirror, but the officer only found the car's insurance paperwork. When the officer again asked defendant where the registration paperwork was located and defendant again said it was behind the rearview mirror, the officer looked in the car's glove compartment. When he did, he discovered a loaded semiautomatic gun. The officers then arrested defendant and thoroughly searched his car. The only marijuana in the car was

the marijuana near the center console, which weighed 0.35 grams.

II. Procedural Background

The People charged defendant with one count of carrying an unregistered, loaded firearm in a vehicle (Pen. Code, § 25850, subd. (a)).

Defendant moved to suppress the handgun found in his car as the fruit of an unlawful search. Following an evidentiary hearing, the trial court denied the motion. The court ruled that the initial interaction between the officers and defendant was a "consensual encounter"; that the officer's discovery of the marijuana in the center console gave him "reasonable suspicion to search for additional contraband, and the glove compartment is a logical place to store contraband"; and that the weapon was "in plain view."

Following denial of his motion, defendant pled no contest to the firearm possession count. The trial court suspended the imposition of sentence, and placed defendant on formal probation for three years with a requirement that he complete 90 days of Caltrans work.

Defendant timely appealed.

DISCUSSION

Defendant's sole contention on appeal is that the trial court erred in denying his suppression motion. We independently review such rulings, but defer to factual findings that are supported by substantial evidence. (*Robey v. Superior Court* (2013) 56 Cal.4th 1218, 1223 (*Robey*); *People v. Durant* (2012) 205 Cal.App.4th 57, 62.)

The trial court correctly denied defendant's suppression motion.

A defendant may seek to suppress evidence obtained during a warrantless search on the ground that it violated the federal Fourth Amendment. (Pen. Code, § 1538.5, subd. (a)(1)(A); Cal. Const., art. I, § 28, subd. (f)(2); *People v. Elizalde* (2015) 61 Cal.4th 523, 531.) Although the Fourth Amendment generally requires law enforcement to obtain a warrant supported by probable cause before conducting a search (*Loder v. City of Glendale* (1997) 14 Cal.4th 846, 871), the "automobile exception" provides that law enforcement may search a vehicle and all containers within it without a warrant as long as they have probable cause to believe the car contains "contraband or evidence." (*California v. Acevedo* (1991) 500 U.S. 565, 580; *Robey*, *supra*, 56 Cal.4th at pp. 1225, 1232.)

The search conducted in this case falls squarely within the automobile exception. *People v. Waxler* (2014) 224 Cal.App.4th 712 (*Waxler*) and *People v. Strasburg* (2007) 148 Cal.App.4th 1052 (*Strasburg*) are directly on point. Both cases held that "the observation of fresh marijuana may furnish probable cause to search a vehicle under the automobile exception." (*Waxler*, at p. 719; *Strasburg*, at p. 1059.)

Defendant raises two sets of arguments in response.

First, he argues that *Waxler* and *Strasburg* were wrong when they were decided. He argues they did not give sufficient weight to California law immunizing persons from prosecution for possessing lower quantities of marijuana for medical purposes. (Health & Saf. Code, §§ 11362.5 & 11362.77, subd. (a).) We disagree. Both cases concluded that our state's medical marijuana laws were irrelevant to the Fourth Amendment analysis because they "provide[] a limited immunity [to prosecution]—not a shield from reasonable investigation."

(*Strasburg*, *supra*, 148 Cal.App.4th at pp. 1059-1060; *Waxler*, *supra*, 224 Cal.App.4th at p. 720.) What is more, even if an officer at first only sees marijuana in a quantity that may be legally possessed, "'a person of ordinary caution would conscientiously entertain a strong suspicion that . . . [the possessor] might stash additional quantities for future use in other parts of the vehicle,'" thus exceeding the legally allowable limit. (*Strasburg*, at p. 1059, quoting *People v. Dey* (2000) 84 Cal.App.4th 1318, 1322.)

Defendant further asserts that *Waxler* and *Strasburg* conflict with cases holding that the possession of a small quantity of marijuana does not constitute an exigency allowing for a warrantless search of a home (*People v. Torres* (2012) 205 Cal.App.4th 989, 993-994; *People v. Hua* (2008) 158 Cal.App.4th 1027, 1033-1034) or the trunk of a car (*Wimberly v. Superior Court* (1976) 16 Cal.3d 557, 563). However, these cases all required proof of an exigency. The automobile exception has no such exigency requirement. (*Robey*, *supra*, 56 Cal.4th at p. 1239; *People v. Chavers* (1983) 33 Cal.3d 462, 468; *People v. Superior Court (Overland)* (1988) 203 Cal.App.3d 1114, 1119-1120.) This is why *Waxler* rejected the notion that there was any conflict between these lines of authority. (*Waxler*, *supra*, 224 Cal.App.4th at pp. 724-725.)

Second, defendant argues that *Waxler* and *Strasburg* have been superseded by the legalization of recreational marijuana effected by the 2016 enactment of Proposition 64. The proposition did not become law until November 2016, and has no retroactive effect on the probable cause to support a search conducted in August 2015. (Pen. Code, § 3; see *Waxler*, *supra*,

224 Cal.App.4th at pp. 721, 723-724 [noting non-retroactivity of other changes to marijuana laws].)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.*
GOODMAN

---

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