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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ESCOBEDO,

Defendant and Appellant.

B242749

(Los Angeles County
Super. Ct. No. LA069934)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Susan M. Speer, Judge. Affirmed.

Stacie R. Halpern for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews, Deputy
Attorney General, for Plaintiff and Respondent.

Defendant Jose Escobedo appeals from his conviction by plea to a felony narcotics offense. The plea was entered pursuant to a plea bargain which occurred after defendant's Penal Code section 1538.5 motion to suppress was denied by the magistrate and his Penal Code section 995 motion to set aside the information was denied by the trial judge. The sole issue on appeal is whether these motions should have been granted on the ground that the evidence against defendant was the product of a Fourth Amendment violation. We conclude that there was no violation of defendant's constitutional right to be free of unreasonable search and seizure, and that the rulings of the magistrate and the trial judge are amply supported. We shall affirm the judgment of conviction.

FACTUAL AND PROCEDURAL SUMMARY

The Los Angeles Police Department had received information from an anonymous informant that an Asian man, in his late 30's or early 40's, was selling narcotics from an alley behind a particular address: 18056 Roscoe Avenue. Officers Valdovinos and Williams, members of the West Valley Narcotics Enforcement Detail, received this information and proceeded to the address to investigate.

They arrived at the location in an unmarked police vehicle at about 3:45 in the afternoon. They parked their vehicle and proceeded to observe the area. They observed a Chrysler 300 vehicle parked behind the Roscoe Avenue address. They were about 40 yards—120 to 125 feet—from the Chrysler. They observed a Asian man, who appeared to be in his 30's or 40's, emerge from the residence at 18056 Roscoe and walk over to the Chrysler. He was holding money in his hand. When he reached the driver's side of the car, the driver thrust out his hand and the man made contact with it, after which the driver withdrew his outstretched hand. There was a brief conversation between the two men. The Asian male then walked around the car to the passenger's side. At that point the passenger extended his hand and dropped a small plastic baggy into the palm of the man's outstretched hand. There was a brief conversation between the two men, following which the Chrysler drove off and the Asian male returned to the residence.

The officers followed the Chrysler as it exited the alley. They stayed about two car lengths behind the Chrysler. The Chrysler then engaged in what the officers described as anti-surveillance driving. It would proceed at the speed limit, then slow down so that other vehicles would pass it, and would then speed up so that any following cars that did the same would be observed. The vehicle also turned onto small streets in residential neighborhoods, then re-emerged onto the principal street and continued. The purpose of this evasive driving is to enable the occupants of the vehicle to see if they were being observed by law enforcement officers or, possibly, by other narcotics dealers.

The Chrysler came to a location near the intersection of Winnetka and Sherman Way, where it was forced to stop by several unmarked police vehicles. There were five police vehicles, and six officers. Among the six were the two officers who had surveilled the Roscoe address and followed the Chrysler. Some of the officers, including Officer Valdovinos, had their weapons drawn. Officers directed the two men in the car to exit and place their hands in the air so that the officers could see them. The driver, Miguel Gomez (who later was a codefendant at the preliminary hearing proceedings) promptly complied. The passenger, defendant Escobedo, did not. Instead he leaned over in the front seat and made arm movements that indicated that he was trying to hide or retrieve some object. After about 10-15 seconds, defendant exited the car and raised his hands, as ordered.

In response to a question by Officer Williams, Gomez consented to a search of his person and the vehicle. The searches of Gomez and defendant were justified, by reasons of officer safety as well as consent. Narcotics dealers are known to hide contraband and weapons. No narcotics were found on Gomez or in the vehicle, but money (in bill form) was found on the console in the front seat of the vehicle, and more was found in Gomez's wallet. Altogether, the amount found was a little over \$1,000. Officer Valdovinos asked defendant if he would consent to be searched and he did. Officer Williams conducted that search (because Valdovinos is a female officer who was not permitted to conduct a search of a male suspect absent exigent circumstances). Officer Williams directed defendant to remove his shoes and, when he did, Officer Valdovinos examined the shoes.

Inside one of them she found a bag containing a substance resembling methamphetamine. Later, counsel stipulated for purposes of the preliminary hearing that this container held 7.03 grams of that substance. Officer Williams described that as a “fairly good amount.”

Both officers testified to their training and experience in narcotics investigations. Officer Williams testified that, based on his training and experience, the exchange he observed at the Roscoe location was a drug sale.

Following the preliminary hearing examination, the magistrate denied the Penal Code section 1538.5 motion to suppress, found probable cause to believe that the charged narcotics offenses had been committed and that defendant (and Gomez) had committed them, and so held them both to answer the felony charges, violation of Health and Safety Code sections 11378 and 11379, subd. (a). The trial judge agreed with the magistrate and denied the Penal Code section 995 motion to dismiss the charges.

Later, defendant pled guilty to the Penal Code section 11378 charge pursuant to a plea agreement, and was sentenced. He filed a timely notice of appeal.¹

DISCUSSION

Defendant argues that the search which yielded the narcotics found in his shoe was the product of an illegal arrest, because the officers lacked probable cause to arrest prior to the search. Defendant also argues that even if he was only detained rather than arrested, the officers lacked a reasonable suspicion to detain him. He also argues that his consent to the search was the product of coercion, and hence invalid. The People take the opposite position on each of these issues, arguing that defendant was detained, not arrested; that there was sufficient basis for the officers’ actions in any case (i.e., whether defendant was detained or arrested), and that his consent to the search was voluntary and not coerced.

Respondent has the better of the arguments on these issues.

¹ The appeal to challenge legality of the search lies notwithstanding the guilty plea. (Pen. Code, § 1538.5, subd. (m).)

There is an abundance of decisions discussing the distinction between an arrest and a detention. Sometimes the distinction is difficult and close. (See *United States v. Sharpe* (1985) 470 U.S. 675, 685.) The amount of police intrusion, the significance of the facts known to the officers, what was reasonably necessary, and other circumstances, all play a role. Here, some officers had drawn their guns, although the record is not clear as to exactly at what point this occurred. But even a stop at gunpoint does not necessarily make the stop an arrest rather than a detention. (See *People v. Celis* (2004) 33 Cal.4th 667, 675, and authority cited.)

An examination of reasonableness, the principal concern for accessing the validity of the officers' actions, indicates the legitimacy of what occurred. First, the officers set up their surveillance as the result of an anonymous tip. The tip was detailed: it stated a specific residential location and described the occupant who allegedly was dealing drugs from that location. It was more than corroborated by what the officers saw, and is legitimately considered in assessing the issue of probable suspicion or cause. (*People v. Butler* (2003) 111 Cal.App.4th 150, 161.) The officers went to that location and observed a person who matched the information identifying the alleged dealer. What they next observed could only have confirmed their suspicion. The person proceeded to a car parked in an alley behind the residence and, from the officers' observations, passed money to the driver, then walked to the other side of the car and received a baggy dropped into his hand by the passenger. The officers were reasonably close to these events, which occurred in broad daylight. The vehicle immediately drove off. It strains credulity to believe that anything other than a hand-to-hand purchase and sale of narcotics had taken place.

What followed confirmed the officers' belief that this is what happened. The vehicle engaged in anti-surveillance driving. Rather than proceed on a direct route to wherever it was headed, it slowed, then sped up, repeatedly changed lanes, and drove off the main road into and out of side streets in several residential neighborhoods. It is not claimed that the occupants had spotted the unmarked police vehicle, which if this had been the case would indicate consciousness of guilt. Instead, according to the officers'

testimony, it was a common precautionary measure taken by drug traffickers to determine whether they are being followed.

When the Chrysler was finally forced to stop by the police vehicles, officers directed the occupants to exit and raise their hands. This, obviously, was a measure taken in the interests of officer safety. The officers intended to at least frisk the occupants, something that would be difficult to do while they were in the vehicle. At the time the officers did not know whether the occupants were armed or not, but it is not uncommon that drug dealers are armed when engaged in their trade. The direction then was justified by officer safety.

Finally, defendant's actions in failing to promptly obey the officers' directions (as his companion had done) and instead leaning over and appearing to move his hands around the adjacent floor area of the vehicle, as though to hide or retrieve an object, added to the officers' suspicion.

Taken together, these circumstances justified the frisk. Even if the officers' conduct amounted to an arrest, the circumstances justified the officers' conduct.

That takes us to the consent to search. The officers did not demand to search defendants' persons; they asked each man if he would consent to being searched. There is no showing that these requests were accompanied by a pointed gun or any other threat. Gomez was not carrying a weapon or contraband. Defendant may have hoped the officers would not search his shoes, and would be compelled to release him. In any event, he did consent, and under the circumstances we conclude that the court rulings that the consents were voluntary is supported by the record. (See *People v. Ratcliff* (1986) 41 Cal.3d 675, 686.)

For these reasons, we conclude that the magistrate did not err in denying defendant's motion to suppress, nor did the trial court err in denying his motion to set aside the information, based on the same grounds as the suppression motion.

DISPOSITION

The judgment is affirmed.

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EPSTEIN, P.J.

We concur:

WILLHITE, J.

SUZUKAWA, J.