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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. RORY R. LAWRENCE, Defendant and Appellant.	2d Crim. No. B237491 (Super. Ct. No. 1359624) (Santa Barbara County)

Rory Robert Lawrence, Jr., appeals from the judgment entered after his no contest plea to transportation of marijuana (Health & Saf. Code, § 11360, subd. (a)), possession of marijuana for sale (***Id***., § 11359), and resisting a peace officer. (Pen. Code, § 148, subd. (a)(1).)[1] The trial court dismissed the possession-for-sale conviction, suspended the imposition of sentence, and placed appellant on supervised probation for five years on condition that he serve 120 days in county jail.

Appellant entered his no contest plea after the trial court had denied his section 1538.5 motion to suppress evidence. Appellant contends that the trial court erroneously denied the motion. The People point out that, in sentencing appellant, the trial court imposed various fees in the wrong amount. We modify the judgment to impose the fees

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

in the correct amount, plus required penalties and surcharges. We affirm the judgment as modified.

Procedural Background

At the preliminary hearing appellant's section 1538.5 motion was denied, and he was held to answer. In the superior court, appellant renewed the motion. (§ 1538.5, subd. (i).) At the hearing on the renewed motion, the evidence was limited to the transcript of the preliminary hearing. The superior court denied the renewed motion.

Facts

At approximately 11:20 p.m., Officer David Lamar saw a car pull out of a gas station and drive a couple of blocks without its headlamps on in violation of Vehicle Code section 24400, subdivision (b).[2] Lamar drove his patrol vehicle behind the car and activated his overhead lights. Appellant, the driver of the car, turned on the headlamps and came to a stop. Appellant had three passengers: Womak, Medina, and Mayer.

Lamar asked appellant for his driver's license. Appellant said that he did not have his driver's license with him. He gave Lamar his name and date of birth. With this information, Lamar was able to confirm through dispatch that appellant had a valid driver's license.

Lamar asked the three passengers to identify themselves. Lamar was familiar with Medina through prior contacts and knew that he was a gang member. Lamar ran a record check on the passengers and discovered that Medina was on active probation with a full search and seizure condition. Medina was sitting directly behind appellant. Two backpacks were on the floorboard next to Medina's feet.

Lamar ordered Medina out of the vehicle and searched him "per his probation terms." Lamar found nothing. Lamar asked the three remaining occupants of the vehicle if they knew to whom the two backpacks belonged. Womack identified one backpack as belonging to the son of his girlfriend. Lamar picked it up and found that it was empty.

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[2] Vehicle Code section 24400, subdivision (b) provides: "A motor vehicle, other than a motorcycle, shall be operated during darkness, or inclement weather, or both, with at least two lighted headlamps . . . ."

No one said anything about the second backpack. When Lamar picked up the second backpack, appellant claimed that it belonged to him and tried to take it away from Lamar. Lamar "wasn't sure if there was a weapon in it or contraband."

Lamar placed the second backpack on the car trunk and, "due to [appellant's] unusual behavior," ordered him out of the vehicle and patted him down for weapons. Lamar found a pocket knife in one of his pockets. Lamar ordered appellant to sit down on the curb next to Medina.

Lamar said that, since Medina was on probation, he was going to search the second backpack. Lamar was concerned that it might contain a weapon. As Lamar was unzipping the second backpack, appellant stood up and attempted to run away. Lamar grabbed appellant and stopped him. Lamar put handcuffs on appellant and placed him inside the patrol car. Lamar searched the second backpack and found 123 grams of marijuana inside.

Standard of Review

"Under section 1538.5, subdivision (i), where a defendant unsuccessfully moves to suppress at the preliminary hearing, the motion may be renewed at a special hearing in the superior court. At such a special hearing, and where, as here, the evidence is limited to the preliminary hearing transcript, the superior court is 'bound by the factual findings of the magistrate and, in effect, becomes a reviewing court drawing all inferences in favor of the magistrate's findings, where they are supported by substantial evidence.' [Citations.] [¶] On appeal, we do not review the findings of the superior court since it acts as a reviewing, and not a fact-finding court. Rather, 'the appellate court disregards the findings of the trial court and reviews the determination of the magistrate who ruled on the motion to suppress.' [Citation.]" (*People v. Snead* (1991) 1 Cal.App.4th 380, 383-384.) " 'In determining whether, on the facts . . . found [by the magistrate], the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]' [Citations.]" (*People v. Redd* (2010) 48 Cal.4th 691, 719, fn. omitted.)

Prolongation of Detention

Appellant contends that Officer Lamar unlawfully prolonged the initially valid detention when he asked the passengers for identification, ran a record check on them, searched Medina, and searched the backpacks. "There is no fixed time limit for establishing the constitutionality of an investigatory detention. Rather, such a detention will be deemed unconstitutional 'when extended beyond what is reasonably necessary under the circumstances that made its initiation permissible. [Citation.]' [Citation.] . . . [¶] A detention that is unreasonably prolonged amounts to a de facto arrest that must be supported by probable cause to be constitutionally valid. [Citation.]" (*People v. Gomez* (2004) 117 Cal.App.4th 531, 537-538.)

The detention was not unreasonably prolonged. Officer Lamar was entitled to request identification from the passengers. "[A] simple request for identification from passengers falls within the purview of a lawful traffic stop and does not constitute a separate Fourth Amendment event. Assuming a lawful stop, an officer is entitled to some chance to gain his bearings and to acquire a fair understanding of the surrounding scene. Just as the officer may ask for the identification of the driver of a lawfully stopped vehicle, [citation], so he may request identification of the passengers also lawfully stopped." (*United States v. Soriano-Jarquin* (4th Cir. 2007) 492 F.3d 495, 500.)

For his own safety, Officer Lamar could lawfully run a record check on the passengers. It was late at night, he knew that Medina was a gang member, and he was outnumbered four to one. "Many courts have recognized that knowledge of the criminal histories of a vehicle's occupants will often be relevant to [an officer's] safety. [Citations.]" (*United States v. Purcell* (11th Cir. 2001) 236 F.3d 1274, 1278.) "[T]raffic stops are 'especially fraught with danger to police officers.' [Citation.]" (*Arizona v. Johnson* (2009) 555 U.S. 323, 330 [129 S.Ct. 781, 172 L.Ed.2d 694].)

When the record check disclosed that Medina was on active probation with a full search and seizure provision, Lamar lawfully prolonged the detention for the purpose of searching Medina to assure that he was not armed. An officer may pat down a suspect for weapons if he has a reasonable suspicion that the suspect is presently armed and

dangerous. (*People v. Osborne* (2009) 175 Cal.App.4th 1052, 1059.) Medina's probationary status and gang membership provided the requisite reasonable suspicion. " '[T]he very assumption of the institution of probation' is that the probationer 'is more likely than the ordinary citizen to violate the law.' [Citation.]" (*United States v. Knights* (2001) 534 U.S. 112, 120 [122 S.Ct. 587, 151 L.Ed.2d 497].) "[D]etention of a known gang member would increase the likelihood of harm to an officer and further justify a search for weapons." (*People v. King* (1989) 216 Cal.App.3d 1237, 1241; see also *In re H.M.* (2008) 167 Cal.App.4th 136, 146 ["It is . . . common knowledge that members of criminal street gangs often carry guns and other weapons"].) In any event, "a suspicionless search pursuant to a probation search condition is not prohibited by the Fourth Amendment." (*People v. Medina* (2007) 158 Cal.App.4th 1571, 1580.)

Officer Lamar also reasonably prolonged the detention for the purpose of searching the backbacks because Medina could have retrieved a weapon from them when he reentered the car. The magistrate found that the backpacks were "at the feet of Medina."

"Alternatively, in light of *Atwater v. City of Lago Vista* (2001) 532 U.S. 318 [121 S.Ct. 1536, 149 L.Ed.2d 549], the [headlamp] violation that led to the initial detention . . . supplied probable cause for [appellant's] de facto arrest. In *Atwater*, the Supreme Court held that an officer who 'has probable cause to believe that an individual has committed even a very minor criminal offense in his presence . . . may, without violating the Fourth Amendment, arrest the offender.' (*Atwater v. City of Lago Vista, supra,* 532 U.S. at p. 354, 121 S.Ct. 1536 [warrantless arrest of motorist jailed for committing seatbelt and other minor traffic offenses was not unconstitutional].) The California Supreme Court . . . held that *Atwater* foreclosed a defendant from challenging a custodial arrest on Fourth Amendment grounds following a valid traffic stop. (*People v. McKay* (2002) 27 Cal.4th 601, 607 . . . ['there is nothing inherently unconstitutional about effecting a custodial arrest for a fine-only offense'].)" (*People v. Gomez, supra,* 117 Cal.App.4th at pp. 538-539.) Thus, even if appellant had been subjected to a de facto arrest because of an unreasonably prolonged detention, his Fourth Amendment rights would not have been

violated since the headlamp violation supplied probable cause to arrest him. (***Id***., at pp. 539-540.)

People v. McGaughran (1979) 25 Cal.3d 577, is of no assistance to appellant. There, a police officer stopped a vehicle for a traffic violation and detained the driver and passenger "for the period necessary to perform [the officer's] functions arising from the violation." (***Id***., at p. 586.) The officer then continued the detention for approximately 10 minutes for the sole purpose of running a warrant check on the driver and passenger. Our Supreme Court held that this additional 10-minute detention " 'exceeded constitutional limitations' " because it was not " 'reasonably necessary' " to the process of dealing with the traffic violation. (***Id***., at p. 587.) The court reasoned: "[T]he traffic violation justifying the stop herein was not of the limited class of offenses for which the officer is either required or authorized to take the defendant into custody and transport him before a magistrate for the filing of a complaint. [Citation.] In those cases the right to custody manifestly includes the right to detain for a warrant check. We deal here, by contrast, with one of that much larger class of traffic violations for which the offender cannot be taken into custody and removed from the scene. In such instances, provided the offender satisfactorily identifies himself [citation], the officer must simply prepare a written notice to appear (i.e., a citation or 'ticket') reciting the particulars of the violation [citation], and must release the offender when he signs a written promise to appear [citation]." (***Id***., at p. 583.)

McGaughran is inapplicable in view of *Atwater v. City of Lago Vista*, *supra*, 532 U.S. 318, and *People v. McKay*, *supra*, 27 Cal.4th 601. As discussed above, these cases permit an officer to make a custodial arrest for a traffic violation. Pursuant to *McGaughran*, this "right to custody manifestly includes the right to detain for a warrant check." (*People v. McGaughran*, *supra*, 25 Cal.3d at p. 583.) Furthermore, *McGaughran* is distinguishable on its facts because the officer there did not recognize an occupant of the vehicle as a gang member.

Search of the Second Backpack

Appellant contends that the search of the second backpack was unlawful because he claimed the backpack as his property and refused to consent to a search. Appellant argues that Medina's probation search condition could not authorize the search of appellant's property. But Officer Lamar was not required to accept as true appellant's claim that the second backpack belonged to him. Since the backpack was on the rear floorboard next to Medina's feet, Lamar reasonably suspected that Medina either exclusively or jointly controlled or possessed the backpack. (See *People v. Baker* (2008) 164 Cal.App.4th 1152, 1159 [object falls within permissible scope of probation search if police reasonably suspect that probationer exclusively or jointly owns, possesses, or controls the object].) In any event, for his personal safety Officer Lamar could lawfully search the second backpack to assure that it did not contain a weapon.

Fees, Penalties, and Surcharges

The People point out that the trial court erroneously imposed fees for the possession-for-sale conviction that it dismissed after appellant had entered his no contest plea. Accordingly, the court facilities fee must be reduced from $90 to $60 (Gov. Code, § 70373, subd. (a)(1)), and the court security fee must be reduced from $120 to $80. (§ 1465.8, subd. (a)(1).)

The trial court also erred in imposing a drug program fee of $600. The fee is $150 for each drug conviction (Health & Saf. Code, § 11372.7, subd. (a), and appellant sustained only one such conviction because the court dismissed the possession-for-sale charge. We must add to this $150 fee a $150 state penalty (§ 1464, subd. (a)(1)); a $105 county penalty (Gov.Code, § 76000, subd. (a)(1); a $30 state surcharge (§ 1465.7, subd. (a)); a $45 state court construction penalty (Gov.Code, § 70372, subd. (a)(1)); a $15 deoxyribonucleic acid penalty (Gov.Code, § 76104.6, subd. (a)(1)); a $15 state-only deoxyribonucleic penalty (Gov.Code, § 76104.7, subd. (a)); and a $30 emergency medical services penalty. (Gov .Code, § 76000.5, subd. (a)(1)). (*People v. Sharret* (2011) 191 Cal.App.4th 859, 864.) With these additions, the total amount comes to $540.

The trial court again erred in imposing a laboratory analysis fee of $200. This fee is $50 for each drug conviction. (Health & Saf. Code, § 11372.5, subd. (a).) We must add to this $50 fee a $50 state penalty (§ 1464, subd. (a)(1)); a $35 county penalty (Gov.Code, § 76000, subd. (a)(1)); a $10 state surcharge (§ 1465.7, subd. (a)); a $15 state court construction penalty (Gov.Code § 70372, subd. (a)(1)); a $10 emergency medical services penalty (Gov.Code, § 76000.5, subd. (a)(1)); a $5 deoxyribonucleic acid penalty (Gov.Code, § 76104.6, subd .(a)(1)); and a $15 state-only deoxyribonucleic acid penalty. (Gov.Code, § 76104.7, subd. (a)). (*People v. Sharret, supra,* 191 Cal.App.4th at pp. 863-864.) With these additions, the total amount comes to $190.

Disposition

The judgment is modified to reduce the court facilities fee from $90 to $60 (Gov. Code, § 70373, subd. (a)(1)) and the court security fee from $120 to $80. (§ 1465.8, subd. (a)(1).) The judgment is further modified to impose a drug program fee of $150 instead of $600 (Health & Saf. Code, § 11372.7, subd. (a)) and a laboratory analysis fee of $50 instead of $200. (Health & Saf. Code, § 11372.5, subd. (a).) Both the drug program fee and the laboratory analysis fee are increased to include the penalties and surcharges set forth in the preceding section of this opinion, entitled "*Fees, Penalties, and Surcharges*." In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J

Kay S. Kuns, Judge

Superior Court County of Santa Barbara

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