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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.

DENNIS E. WILSON,

Defendant and Appellant.

2d Crim. No. B234935
(Super. Ct. No. MA050053)
(Los Angeles County)

Dennis E. Wilson appeals the judgment entered after a jury convicted him of possession of a firearm by a felon (Pen. Code,¹ former § 12021, subd. (a)(1), now § 29800). In a bifurcated proceeding, the trial court found that appellant had two prior strike convictions (§§ 667, subds. (b)-(i), 1170.1, subds. (a)-(d)) and had served three prior prison terms (§ 667.5, subd. (b)). Appellant was sentenced to 25 years to life in state prison. He contends (1) the court erred in denying his motion to suppress; (2) his post-arrest statements were admitted in violation of his *Miranda*² rights; and (3) the judgment should be modified to correct a clerical error in the abstract of judgment. We

¹ All further undesignated statutory references are to the Penal Code.

² (*Miranda v. Arizona* (1966) 384 U.S. 436.)

shall order the abstract corrected to reflect the imposition of a \$30 criminal conviction assessment fee under Government Code section 70373. Otherwise, we affirm.

STATEMENT OF FACTS

At about 12:20 a.m. on August 12, 2010, Los Angeles County Deputy Sheriff Wesley Guthrie was on patrol in Lancaster when he heard loud music emanating from appellant's vehicle. The music was also heard by Deputy Slimak, who was on patrol in a separate car. Deputy Slimak conducted a traffic stop of appellant for a violation of Vehicle Code section 27007,³ and Deputy Guthrie acted as his backup. Deputy Guthrie positioned himself to the right of appellant's vehicle while Deputy Slimak approached the driver's door.

After Deputy Slimak spoke to appellant for approximately one minute, he directed him to exit his vehicle. Appellant was frisked for weapons near the hood of the deputy's patrol car, then placed in the back seat of the patrol car. In the meantime, Deputy Guthrie went to close the open driver's seat door to appellant's vehicle to prevent it from being hit by oncoming traffic. As the deputy was about to close the door, he saw a handgun in plain view between the driver's seat and center console. Deputy Guthrie summoned Deputy Slimak, who also saw the gun in plain view.

Deputy Guthrie seized the gun, which had a live round of ammunition in the chamber and was set to be fired. Appellant was placed under arrest and given the *Miranda* advisements. When Deputy Slimak asked appellant if he understood, appellant looked at the deputy, made a blowing air noise, and rolled his eyes. Appellant proceeded to tell the deputy that the gun was not meant "for any law enforcement officers that night." Appellant said he had driven to Los Angeles to retrieve the gun after someone shot at him earlier that day just up the street. He also said the deputies had pulled him over while he was returning to look for the person who shot at him.

³ Vehicle Code section 27007 provides in pertinent part that "[n]o driver of a vehicle shall operate . . . any sound amplification system which can be heard outside the vehicle from 50 or more feet when the vehicle is being operated upon a highway, unless that system is being operated to request assistance or warn of a hazardous situation."

DISCUSSION

I.

Motion to Suppress

Appellant contends the trial court erred in denying his motion to suppress the handgun and his post-arrest statements on the ground that they were the fruit of an unlawful and unduly prolonged detention. We disagree.

"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. Glaser* (1995) 11 Cal.4th 354, 362.)

"The Fourth Amendment . . . prohibits seizures of persons, including brief investigative stops, when they are 'unreasonable.' [Citations.]" (*People v. Souza* (1994) 9 Cal.4th 224, 229.) "The guiding principle in determining the propriety of an investigatory detention is 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.' [Citations.] In making our determination, we examine 'the totality of the circumstances' in each case. [Citations.]" (*People v. Wells* (2006) 38 Cal.4th 1078, 1082-1083.)

"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, supra*, 9 Cal.4th at p. 231.) The reasonable suspicion that justifies a detention is "simply . . . 'a particularized and objective basis' for suspecting the person stopped of criminal activity." (*Ornelas v. United States* (1996) 517 U.S. 690, 696.) The existence of a reasonable suspicion that a vehicle is in violation of the Vehicle Code provides a valid basis for a traffic stop. (*People v. Saunders* (2006) 38 Cal.4th 1129, 1135.)

It is well settled that "once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." (*Pennsylvania v. Mimms* (1977) 434 U.S. 106, 111, fn. 6 (*Mimms*).) It is equally settled that the police do not violate the Fourth Amendment by seizing weapons discovered in plain view during a valid traffic stop. (*People v. Lomax* (2010) 49 Cal.4th 530, 563-564.)

Where a vehicle has been lawfully stopped for a traffic violation, the detention "must be temporary and last no longer than is necessary to effectuate the purpose of the stop." (*Florida v. Royer* (1983) 460 U.S. 491, 500.) "A lawful roadside stop begins when a vehicle is pulled over for investigation of a traffic violation. The temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop. Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave. [Citation.] An officer's inquiries into matters unrelated to the justification for the traffic stop . . . do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop. [Citation.]" (*Arizona v. Johnson* (2009) 555 U.S. 323, 333.) Moreover, "[c]ircumstances which develop during a detention may provide reasonable suspicion to prolong the detention. [Citation.]" (*People v. Russell* (2000) 81 Cal.App.4th 96, 102.) "There is no set time limit for a permissible investigative stop; the question is whether the police diligently pursued a means of investigation reasonably designed to confirm or dispel their suspicions quickly. [Citations.]" (*Ibid.*)

Appellant does not dispute that he was lawfully stopped for a violation of the Vehicle Code. He claims, however, that the detention became unlawful when Deputy Slimak ordered him out of his vehicle and made him sit in the back seat of his patrol car "for some period of time." He argues that "[a]s no legitimate concerns about officer safety justified removing appellant from his car, appellant's Fourth Amendment rights were violated. Appellant should not have been removed from his car, and had appellant remained in his car, Deputy Guthrie would have not seen the gun."

We agree with the trial court's conclusion that the handgun was legally seized because it was discovered in plain view in the course of a valid traffic stop. Contrary to appellant's position, Deputy Slimak did not violate the Fourth Amendment by ordering him to exit his vehicle. (*Mimms, supra*, 434 U.S. at p. 111, fn. 6.) Although appellant also takes issue with the fact that he was placed in the back seat of Deputy Slimak's patrol car, he acknowledges that Deputy Guthrie did not discover the gun as a result of that action.⁴ Rather, the gun came into plain view when appellant was lawfully ordered to exit his vehicle. Under the circumstances, the deputy had the right to seize the weapon. (*People v. Lomax, supra*, 49 Cal.4th at p. 564.)

Appellant also fails to demonstrate that his pre-arrest detention was unduly prolonged. Deputy Guthrie testified that no more than three to four minutes had passed from the time of the initial stop until he discovered the gun. This is not beyond the amount of time that would have been reasonably necessary for Deputy Slimak to perform the duties attendant to the purpose of the stop. (See *People v. McGaughran* (1979) 25 Cal.3d 577, 584–587.) Because the gun was discovered shortly after appellant was lawfully ordered to exit his vehicle, its seizure did not violate appellant's Fourth Amendment rights. Appellant's motion to suppress the gun, and the statements he made following his arrest for its possession, was thus properly denied.

II.

Miranda

At trial, appellant moved to suppress his post-arrest statements on the ground that they were made without a waiver of his *Miranda* rights. The court found that although appellant had not verbally stated that he understood his right to remain silent when the *Miranda* advisements were given, he had conveyed his understanding to that effect by rolling his eyes and making a blowing air sound. The court also noted that

⁴ In their respondent's brief, the People state: "It appears that it is the removal from his car that appellant is concerned about rather than the placement in the patrol car for officer safety reasons. Once he was removed from his car and his car door remained open, the gun was in plain view. The fact, therefore, that he was placed in the back of the patrol car is immaterial to his claim." Appellant does not dispute this characterization in his reply brief.

appellant had numerous prior arrests and had not been coerced or otherwise forced to answer any questions. The court ultimately concluded that the totality of the circumstances indicated appellant had knowingly and voluntarily waived his right to remain silent. Accordingly, the court denied the motion and admitted appellant's statements. Appellant asserts that this ruling was erroneous. We conclude otherwise.

Pursuant to *Miranda*, "'a suspect [may] not be subjected to custodial interrogation unless he or she knowingly and intelligently has waived the right to remain silent, to the presence of an attorney, and, if indigent, to appointed counsel.' [Citations.] After a knowing and voluntary waiver, interrogation may proceed 'until and unless the suspect clearly requests an attorney.'" [Citation.] The prosecution bears the burden of demonstrating the validity of the defendant's waiver by a preponderance of the evidence." (*People v. Dykes* (2009) 46 Cal.4th 731, 751 (*Dykes*).)

A criminal defendant's waiver of *Miranda* rights is effective only if "made voluntarily, knowingly and intelligently." (*People v. Combs* (2004) 34 Cal.4th 821, 845.) The inquiry is twofold: "' . . . First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. . . .'" (*Ibid.*)

"In considering a claim on appeal that a statement or confession is inadmissible because it was obtained in violation of a defendant's *Miranda* rights, we 'review independently the trial court's legal determinations. . . . We evaluate the trial court's factual findings regarding the circumstances surrounding the defendant's statements and waivers and "'accept the trial court's resolution of disputed facts and inferences, and its evaluations of credibility, if supported by substantial evidence.'"" (*Dykes, supra*, 46 Cal.4th at p. 751.)

The trial court did not err in finding that appellant had knowingly and voluntarily waived his *Miranda* rights. In meeting its burden of making that showing, the prosecution "[did] not need to show that [the] waiver of *Miranda* rights was express. An

'implicit waiver' of the 'right to remain silent' is sufficient to admit a suspect's statement into evidence. . . . [A] waiver of *Miranda* rights may be implied through 'the defendant's silence, coupled with an understanding of his rights and a course of conduct indicating waiver.' [Citation.]" (*Berghuis v. Thompkins* (2010) ___ U.S. ___ [130 S.Ct. 2250, 2261].) Here, appellant responded to the *Miranda* inquiry by rolling his eyes and making a blowing sound. Without any hesitation, appellant immediately proceeded to assure the detective that the gun found in his car was not meant for any law enforcement officers. He then stated that he had just retrieved the gun from Los Angeles because he was planning to confront whomever had shot at him earlier that night. The record also reflects that appellant has numerous prior arrests in which he was presumably given *Miranda* warnings. "As a general proposition, the law can presume that an individual who, with a full understanding of his or her rights, acts in a manner inconsistent with their exercise has made a deliberate choice to relinquish the protection those rights afford. [Citations.]" (*Id.* at p. 2262.) Under the totality of the circumstances, such a presumption can be drawn here.

Even if appellant could establish that his statements were obtained in violation of *Miranda*, the error in admitting the statements would be harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24; *People v. Thomas* (2011) 51 Cal.4th 449, 498.) Appellant was the driver and sole occupant of a vehicle in which a loaded semiautomatic firearm was found in plain view between the driver's seat and center console. In light of this evidence, no reasonable juror would have found that appellant was unaware of the gun's presence but for his statements to that effect.

III.

Criminal Conviction Assessment Fee

In orally pronouncing the sentence, the court ordered appellant to pay a \$30 criminal conviction assessment fee in accordance with Government Code section 70373. The abstract of judgment, however, refers to the payment of a \$30 "critical needs fine." Appellant contends that the oral pronouncement is correct, and the People concede the

point. (*People v. Mesa* (1975) 14 Cal.3d 466, 471.) We shall order the judgment corrected accordingly. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.)

DISPOSITION

The judgment is modified to reflect the imposition of a \$30 criminal conviction assessment fee under Government Code section 70373, and to strike the reference to a \$30 critical needs fine. The superior court clerk shall prepare an amended abstract of judgment and forward a copy to the Department of Corrections and Rehabilitation. As so modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Richard E. Naranjo, Judge
Superior Court County of Los Angeles

James M. Crawford, under appointment by the Court of Appeal, for
Defendant and Appellant.

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