Filed 11/15/12 Dinkins v. Super. Ct. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JONATHAN DINKINS, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; THE PEOPLE, Real Party in Interest.	No. B236811 (Los Angeles County Super. Ct. No. NA078034)

ORIGINAL PROCEEDINGS in mandate. James B. Pierce, Judge. Petition denied.

Jonathan E. Roberts for Petitioner.

No appearance for Respondent.

Steve Cooley, District Attorney, Brentford Ferreira and Serena Murillo, Deputy District Attorneys, for Real Party in Interest.

Petitioner Jonathan Dinkins was charged with possession of cocaine for sale and perjury after police officers arrested him and searched his person and a vehicle that had been rented to his girlfriend. The trial court denied Dinkins's pretrial motion to suppress. Dinkins petitions for issuance of a writ of mandate or prohibition directing the trial court to grant his motion. We conclude that the search was constitutionally permissible under the automobile exception to the warrant requirement, and accordingly deny the writ petition.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Dinkins's arrest and searches of his car and person.*

Viewing the record in the light most favorable to the trial court's ruling (*People v. Davis* (2005) 36 Cal.4th 510, 528-529), the following relevant evidence was adduced at the hearing on the suppression motion conducted on September 15, 2011. At approximately 11:30 p.m. on April 15, 2008, Long Beach Police Officer Joshua Castro was on patrol by himself, in a marked police cruiser, near 65th Street and Rose Avenue in Long Beach. The area was known for gang and drug activity. In the preceding three months, the neighborhood had been "plagued with auto burglaries in the nighttime hours."

Castro observed Dinkins standing on the sidewalk near the corner, leaning over and looking into, but not touching, a parked vehicle. Castro shined his spotlight at Dinkins, parked and exited the police car, and began to identify himself as a police officer. Dinkins looked at Castro, reached with his right hand toward his waistband, and turned and ran, jumping over a stucco wall and into the backyard of a residence. In Castro's experience, Dinkins's act of reaching for his waistband suggested he was armed; however, he did not see a gun. Castro radioed other police units regarding the incident. An officer who was in a nearby location advised Castro that he could hear Dinkins running through backyards and jumping fences. Castro ran south to 65th Street, where, within a minute, he caught sight of Dinkins running and gave chase. Other officers arrived on the scene. Dinkins was discovered hiding behind a parked car in a driveway.

A man who exited from the house where Dinkins was hiding told Castro that he did not know Dinkins and had not given him permission to enter the yard. Castro arrested Dinkins for trespassing. Dinkins gave his name as Jonathan Taylor. A search of Dinkins's person incident to arrest revealed a California driver's license in the name of Jonathan Taylor, a set of keys to a rental car, a cellular telephone, and two "wads" of cash totaling $2,000. One roll of cash was made up of $100 bills, the other of $20's. Dinkins volunteered that the keys were to "me and my girl's car." He identified his girlfriend as "Tiffany." Police placed Dinkins in the back seat of a squad car.

The rental car keychain listed the vehicle's model, color, and license plate number. Using this information, another officer located the rental vehicle, which was parked in front of 6524 Rose Avenue. The car was lawfully parked and locked. Its location was approximately five or six car lengths away from the spot where Officer Castro had initially observed Dinkins looking into the other car. Castro believed it was possible the rental car could have been involved in a crime, "due to all the burglaries in the area. The people who auto burg, they're not going to carry all the belongings on their persons through the streets. They usually put them in a layoff car or . . . hide them in the bushes so they can retrieve them at a later time."

Four officers searched the rental car. Inside they discovered, inter alia, a clear plastic bag containing a white powdery substance, which was later determined to contain 965.58 grams of cocaine salt; plastic bags; cellular telephones; and a "burner." A rental agreement in the car indicated the vehicle had been rented to " 'Tiffany.' " Receipts in the car bore Dinkins's name. Dinkins was driven to a spot within five to six car lengths of the rental car. At that point the search had already been completed.

Dinkins was taken to the police station and booked for offenses related to the drugs found in the car. Officers learned at that point that Taylor was an alias, that a warrant had been issued for Dinkins's arrest, and that Dinkins was on parole. The car was impounded and a further search was conducted, revealing "gang paraphernalia." After the searches, officers obtained a search warrant, based in part on items found in the

car. Dinkins was charged with possession of cocaine for sale (Health & Saf. Code, § 11351) and perjury (Pen. Code, § 118, subd. (a)).

2. *Suppression motions and the trial court's ruling.*

Dinkins moved to suppress all items seized from his person and from the car. (Pen. Code, § 1538.5.) He argued that his initial detention and arrest violated the Fourth Amendment. He urged that the vehicle search was invalid under both *Arizona v. Gant* (2009) 556 U.S. 332 (*Gant*) and *New York v. Belton* (1981) 453 U.S. 454 (*Belton*), in that he was not in or near the car when the search was conducted; and the vehicle search was not a valid inventory search. The People countered that the initial detention and arrest were constitutionally permissible and the vehicle search was a valid inventory search. The trial court ruled that the initial detention, arrest, and search of Dinkins's person did not violate the Fourth Amendment. Because the search predated *Gant, Belton* and *Thornton v. United States* (2004) 541 U.S. 615 (*Thornton*) controlled. Dinkins was connected to the car because (1) he had the keys in his pocket; (2) he was observed running from the "approximate area" where the car was parked; and (3) his flight from police suggested the car was being used to hide stolen property or drugs. Therefore, the vehicle search fell within the parameters of *Belton* and *Thornton.* Accordingly, the court denied the motion.

3. *Writ petition.*

Dinkins petitioned this court for a writ of prohibition or mandate. He acknowledged that under *Davis v. U.S.* (2011) __ U.S. __ [131 S.Ct. 2419, 180 L.Ed.2d 285] (*Davis*), suppression was not required where a search conducted prior to the *Gant* decision complied with *Belton* and *Thornton.* He argued, however, that the search of the car was not constitutionally permissible even under the prior law because he was not a recent occupant of the vehicle. We issued an order to show cause and ordered a stay of all proceedings on the matter in the superior court.

DISCUSSION

1. *Applicable legal principles and standard of review.*

The Fourth Amendment guarantees the right to be free of unreasonable searches and seizures by law enforcement personnel. (U.S. Const., 4th Amend.; *Davis, supra,*131 S.Ct. at p. 2423; *People v. Diaz* (2011) 51 Cal.4th 84, 90; *People v. Evans* (2011) 200 Cal.App.4th 735, 742.) Warrantless searches are presumed to be unreasonable, " 'subject only to a few specifically established and well-delineated exceptions.' " (*People v. Diaz, supra,* at p. 90; *Gant, supra,* 556 U.S. at p. 338.) The prosecution bears the burden of demonstrating a legal justification for such a search. (*People v. Redd* (2010) 48 Cal.4th 691, 719; *People v. Superior Court (Nasmeh)* (2007) 151 Cal.App.4th 85, 101.) If there is a legitimate reason for a search or seizure, an officer's subjective motivation is generally irrelevant. (*Kentucky v. King* (2011) ___ U.S. ___ [131 S.Ct. 1849, 1859, 179 L.Ed.2d 865, 877]; *People v. Lomax* (2010) 49 Cal.4th 530, 564.)

We evaluate challenges to the admissibility of a search or seizure solely under the Fourth Amendment. (*People v. Carter* (2005) 36 Cal.4th 1114, 1141.) Exclusion of evidence is permissible only if mandated by the federal Constitution. (Cal. Const., art. I, § 28; *People v. Robinson* (2010) 47 Cal.4th 1104, 1119.) When reviewing the denial of a suppression motion, we defer to the trial court's express or implied factual findings if supported by substantial evidence, but exercise our independent judgment to determine whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment. (*People v. Lomax, supra*, 49 Cal.4th at p. 563; *People v. Redd, supra*, 48 Cal.4th at p. 719.) We will affirm the trial court's ruling if it is correct on any theory of law applicable to the case, even if for reasons different than those given by the trial court. (*People v. McDonald* (2006) 137 Cal.App.4th 521, 529.)

2. *The initial detention, arrest, and search of Dinkins's person were constitutionally reasonable.*

An officer may, consistent with the Fourth Amendment, temporarily detain a suspect based only on a reasonable, articulable suspicion that the person has committed or is about to commit a crime. (*Illinois v. Wardlow* (2000) 528 U.S. 119, 123; *In re H.M.*

(2008) 167 Cal.App.4th 136, 142; *People v. Durazo* (2004) 124 Cal.App.4th 728, 734.) Here, the facts gave rise to a reasonable suspicion that Dinkins was engaged in criminal activity. He was observed looking into a parked car, near midnight, in an area known for criminal and drug activities, where numerous automobile burglaries had recently occurred. Peering into a parked car in the middle of the night is unusual behavior; given the spate of recent burglaries, Officer Castro's suspicions were reasonably aroused. (See *Illinois v. Wardlow*, *supra*, at p. 124 [officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation]; *In re H.M., supra*, at p. 145; *People v. Souza* (1994) 9 Cal.4th 224, 240.) Dinkins immediately and precipitously fled upon seeing Castro, corroborating these suspicions. "Headlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." (*Illinois v. Wardlow, supra*, at p. 124; *In re H.M., supra*, at p. 144.) Dinkins also reached for his waistband, suggesting he was armed.

Once Officer Castro observed Dinkins jump a wall and run through various backyards, he had probable cause to arrest him. (Pen. Code, § 602.8, subd. (a) ["Any person who without the written permission of the landowner, the owner's agent, or the person in lawful possession of the land, willfully enters any lands . . . enclosed by fence, belonging to, or occupied by, another . . . is guilty of a public offense"].) When an officer has probable cause to believe that an individual has committed even a minor criminal offense in his or her presence, the subject's arrest does not offend the Fourth Amendment. (*Atwater v. Lago Vista* (2001) 532 U.S. 318, 354-355; *People v. McKay* (2002) 27 Cal.4th 601, 607.) Once Dinkins had been arrested, a search of his person was constitutionally permissible. A police officer may, incident to a lawful arrest, conduct a contemporaneous warrantless search of the arrestee's person. (*United States v. Robinson* (1973) 414 U.S. 218, 235; *People v. Diaz*, *supra*, 51 Cal.4th at p. 91; *People v. Redd, supra*, 48 Cal.4th at pp. 719-720; *In re Humberto O.* (2000) 80 Cal.App.4th 237, 241.)

3. *The vehicle search.*

(i) *Applicable law.*

Chimel v. California (1969) 395 U.S. 752, held that a police officer who makes a lawful arrest may conduct a warrantless search of an arrestee's person and the area within his or her immediate control. (*Id.* at p. 763; *Davis, supra,* 131 S.Ct. at p. 2424.) The *Chimel* exception derived from interests in officer safety and evidence preservation. (*Gant, supra,* 556 U.S. at p. 339.) *Belton* extended *Chimel* and held that when a police officer has made a lawful custodial arrest of a vehicle's occupant, the officer might, " 'as a contemporaneous incident of that arrest, search the passenger compartment' " of the vehicle. (*Davis, supra*, 131 S.Ct. at p. 2424; see *Belton, supra,* 453 U.S. at pp. 459-460.) *Thornton, supra*, 541 U.S. 615, extended *Belton* to allow vehicle searches incident to the arrest of persons who were "recent occupants" of a vehicle. (*Id.* at pp. 623-624; *People v. Nottoli* (2011) 199 Cal.App.4th 531, 548.) Until 2009, *Belton* and its progeny were widely understood to have established a "simple, bright-line rule" that automobile searches incident to arrests of recent occupants were constitutionally valid regardless of whether the arrestee was within reaching distance of the vehicle at the time of the search. (*Davis, supra*, 131 S.Ct. at p. 2424; see *Gant, supra,* at p. 341.)

In 2009, *Gant* rejected this sweeping interpretation of *Belton*. *Gant* reasoned that "[t]o read *Belton* as authorizing a vehicle search incident to every recent occupant's arrest," even when the arrestee was out of reach of the passenger compartment, would "untether the rule from the justifications underlying the *Chimel* exception" and undervalue the privacy interests at stake. (*Gant, supra*, 556 U.S. at pp. 343-345; *People v. Evans, supra,* 200 Cal.App.4th at p. 745.) The court adopted a "new, two-part rule under which an automobile search incident to a recent occupant's arrest is constitutional (1) if the arrestee is within reaching distance of the vehicle during the search, or (2) if the police have reason to believe that the vehicle contains 'evidence relevant to the crime of arrest.' [Citation.]" (*Davis, supra*, 131 S.Ct. at p. 2425; *Gant, supra,* at pp. 343-344; *People v. Evans, supra,* at p. 745.) Where neither justification is present, "a search of an

arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies." (*Gant, supra,* at p. 351.)

Gant applies retroactively to cases that were not yet final when it was issued. (*Davis, supra,* 131 S.Ct. at p. 2431.) However, where officers conducted a pre-*Gant* search in compliance with binding precedent in effect at the time, the exclusionary rule is inapplicable. (*Id.* at pp. 2423-2424, 2428-2429, 2434.) The search in the instant case transpired on April 15, 2008, approximately one year before *Gant* was decided. As the trial court correctly reasoned, the legality of the vehicle search must therefore be evaluated under the law as it existed prior to *Gant.* (*Davis, supra,* at p. 2434.)

(ii) *The vehicle search was not lawful under Gant.*

Before addressing whether the search was reasonable under the prior law, we take a brief detour to address the People's contention that the search was valid even under *Gant.* It was not. Dinkins was not near the car when it was searched, and he plainly did not have access to the vehicle's interior. The search was therefore not valid under *Gant*'s first prong. (See *Gant, supra,* 556 U.S. at pp. 343-344; *People v. Evans, supra,* 200 Cal.App.4th at p. 745.) Nor was it reasonable for the officers to believe evidence relevant to Dinkins's crime of arrest—trespass—might be found in his automobile. (See *People v. Evans, supra,* at p. 746.) *Gant* explained: "In many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence." (*Gant, supra,* at p. 343, citing *Atwater v. Lago Vista, supra,* 532 U.S. 318 [petitioner arrested for a misdemeanor seatbelt violation]; *Knowles v. Iowa* (1998) 525 U.S. 113 [petitioner stopped for speeding].) Trespass, like the minor traffic offenses cited by *Gant,* is by its very nature an "offense for which police could not expect to find evidence in the passenger compartment" of the defendant's vehicle. (See *Gant, supra,* at p. 344; *People v. Evans, supra,* at pp. 750-751, and cases cited therein.) Nothing about the particular trespass at issue here suggests otherwise.

The People attempt to circumvent *Gant* by arguing that although the actual offense of arrest was trespass, Officer Castro was originally investigating auto burglary, and he could have expected to find evidence of burglary in the car. The People acknowledge

that a "strict reading" of *Gant* "would suggest that because Petitioner was arrested for trespass," a search for evidence related to burglary was impermissible under the *Gant* exception. This is not merely a "strict reading" of *Gant*; it is the only reasonable interpretation. *Gant* speaks solely in terms of the *offense of arrest*; it does not provide an exception for other offenses the police might have been investigating. (*Gant, supra,* 556 U.S at pp. 343-344.) The People cite no authority in which *Gant* has been interpreted as they suggest.

(iii) *Search incident to arrest under pre-Gant principles.*

As noted, *Thornton, supra*, 541 U.S. 615, extended the *Belton* rule to "recent occupants" of a vehicle. In *Thornton,* an officer observed defendant Thornton driving a vehicle bearing another vehicle's license plates. Before the officer could make a traffic stop, Thornton parked and exited the car. (*Id.* at p. 618.) The officer pulled in behind Thornton and performed a consensual pat search, during which Thornton admitted possessing drugs. (*Ibid.*) After arresting Thornton the officer searched the car and discovered a gun inside. Thornton sought to suppress the gun, arguing that *Belton* applied only when the officer initiated contact while the arrestee was an occupant of the vehicle. (*Id.* at p. 619.) *Thornton* disagreed, reasoning that "the arrest of a suspect who is next to a vehicle presents identical concerns regarding officer safety and the destruction of evidence as the arrest of one who is inside the vehicle." (*Id.* at p. 621.) "[W]hile an arrestee's status as a 'recent occupant' may turn on his temporal or spatial relationship to the car at the time of the arrest and search, it certainly does not turn on whether he was inside or outside the car at the moment that the officer first initiated contact with him." (*Id.* at p. 622, fn. omitted.) The court acknowledged that realistically, contraband inside the car was not readily accessible to a defendant located outside the vehicle, but found that the "need for a clear rule" justified the generalization. (*Id.* at pp. 622-623.)

Thornton did not provide further guidance regarding the "temporal or spatial" parameters within which *Belton* applied, and courts have come to a variety of conclusions on the exception's scope. "Since *Thornton,* federal and state courts have been sharply

divided over what distance constitutes sufficient spatial proximity between the arrestee and the vehicle for the arrestee to be considered a recent occupant . . . . " (*U.S. v. Caseres* (9th Cir. 2008) 533 F.3d 1064, 1071; see *Gant, supra,* 556 U.S. at pp. 345-346 & fns. 6 & 7; *U.S. v. Pittman* (7th Cir. 2005) 411 F.3d 813, 815-816.) California courts have held that in order for the *Belton/Thornton* exception to apply, four circumstances must be present: (1) there must be a lawful custodial arrest; (2) the search must be contemporaneous to the arrest; (3) the search must be limited to the passenger compartment and any containers therein; and (4) the arrestee must be a driver, passenger, or recent occupant of the vehicle. (*People v. Baker* (2008) 164 Cal.App.4th 1152, 1157-1158.)

Here, three of the four prerequisites for application of *Belton* were met. There is no question there was a lawful custodial arrest, as we have explained *ante.* The scope of the search was limited to the passenger compartment and containers located therein. The search was contemporaneous in time with the arrest: it appears that the car was being searched at roughly the same time Dinkins was being arrested.

However, it is questionable whether Dinkins can be considered a "recent occupant" of the vehicle. The People do not cite, and our research has not disclosed, any case in which the *Belton/Thornton* exception has been applied under circumstances resembling those in the instant case. Unlike in *Thornton* and numerous other authorities applying the exception, Officer Castro did not observe Dinkins inside or operating the car at any point. Unlike in *People v. Stoffle* (1991) 1 Cal.App.4th 1671 or *People v. Boissard* (1992) 5 Cal.App.4th 972, cited by the parties, Dinkins was not observed leaning on the car, reaching into it, or placing items into it. Castro did not see Dinkins park the car and walk away, or approach it as if about to enter. Officers had no inkling Dinkins had a car until they discovered the keys in his pocket when he was arrested a significant distance from the vehicle itself. The car was located only after an officer was sent to look for it, using the description on the rental car key fob. Dinkins was, of course, in possession of the keys and admitted he and his girlfriend were using the car. Evidence Dinkins did not

reside nearby might have allowed the inference that he had recently driven the car to the neighborhood; but no such evidence was adduced at the hearing.

Dinkins's distance from the car is also problematic. Officer Castro testified that he first observed Dinkins approximately five or six car lengths away from the rental car. Dinkins ran, and Castro lost sight of him. Castro saw him again approximately six to eight houses away. Dinkins was apprehended and arrested in a driveway approximately 150 feet from the spot where Castro caught sight of him. After being arrested, Dinkins was *driven back* to the corner of Rose and 65th Street, approximately five to six car lengths from where the rental car was parked. At that point, the search had already occurred. Tellingly, Officer Castro testified that he was not present when the car was being searched; as Dinkins was in Castro's custody, he could not have been present either. Under these circumstances application of the *Belton/Thornton* exception appears questionable. (See, e.g., *U.S. v. Caseres, supra*, 533 F.3d at pp.1070-1072, and cases cited therein [vehicle search lacked sufficient "spatial or temporal proximity" where suspect was a block and a half away from the vehicle when the search occurred]; see also *U.S. v. Pittman, supra*, 411 F.3d at pp. 815-816.) While some courts have applied *Belton* when a search occurred a block or more away from the vehicle (see *U.S. v. Caseres, supra*, at p. 1071, fn. 6 [comparing cases]), we have found none applying the exception where there was also such limited evidence demonstrating the defendant's recent physical presence in the vehicle.

Fortunately, however, we need not decide the question. As noted, we affirm the trial court's ruling if it is correct on any theory of law applicable to the case.[1] (*People v.*

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[1] The People argued below that the search was a lawful inventory search, but have appropriately abandoned this contention in their opposition to the writ petition. Police may constitutionally impound vehicles that jeopardize public safety or the efficient movement of traffic, as part of their " 'community caretaking functions.' " (*South Dakota v. Opperman* (1976) 428 U.S. 364, 368-369.) Whether impoundment is warranted under the community caretaking doctrine depends on the location of the vehicle and the officers' duty to prevent it from creating a hazard to other drivers or becoming a target for vandalism or theft. (*People v. Williams* (2006) 145 Cal.App.4th

McDonald, supra, 137 Cal.App.4th at p. 529.) Here, even assuming arguendo the search was invalid under *Belton/Thornton,* it was constitutionally permissible under the automobile exception to the warrant requirement.[2]

(iv) *The automobile exception.*

Under the automobile exception, police who have probable cause to believe a lawfully stopped vehicle contains evidence of criminal activity or contraband may conduct a warrantless search of any area of the vehicle in which the evidence might be found. (*Gant, supra*, 556 U.S. at p. 347; *United States v. Ross* (1982) 456 U.S. 798, 825 (*Ross*); *Maryland v. Dyson* (1999) 527 U.S. 465, 466-467; *People v. Panah* (2005) 35 Cal.4th 395, 469; *People v. Superior Court (Nasmeh), supra,* 151 Cal.App.4th at pp. 100-101.) Such a search "is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained." (*Ross, supra,* at p. 809.) *Ross* "allows searches for evidence relevant to offenses other than the offense of arrest, and the scope of the search authorized is broader." (*Gant, supra,* at p. 347.) "If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search."

756, 761.) An inventory search must be carried out according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity; it "must not be a ruse for a general rummaging in order to discover incriminating evidence." (*Florida v. Wells* (1990) 495 U.S. 1, 4; *Colorado v. Bertine* (1987) 479 U.S. 367, 375; *People v. Redd, supra,* 48 Cal.4th at p. 722.) Here, the car was legally parked on a residential street and locked. It was not blocking traffic, was not damaged, and did not present a hazard to the public. It had been rented to Dinkins's girlfriend; she was not detained or arrested, and was therefore in a position to exercise control over the car. The probability the car would be vandalized or broken into was no greater than for any other vehicle lawfully parked on the street. (*People v. Williams, supra,* at p. 762.) The People thus failed to show impoundment served any protective function. It is also questionable whether the search was conducted pursuant to standardized criteria, rather than as an investigatory search for incriminating evidence.

[2] Because the parties did not initially focus on the applicability of the automobile exception, we requested, and have considered, additional briefing from the parties on this point.

(*Ross, supra,* at p. 825; *Gant, supra,* at p. 347.) The automobile exception is rooted in the reduced expectation of privacy in a vehicle, the fact a vehicle is inherently mobile, and the historical distinctions between searches of automobiles and dwellings. (See *California v. Carney* (1985) 471 U.S. 386, 390-391; *People v. Superior Court (Nasmeh), supra,* at p. 100.)

Probable cause is defined as " ' "a fair probability that contraband or evidence of a crime will be found." ' " (*Alabama v. White* (1990) 496 U.S. 325, 330; *People v. Hunter* (2005) 133 Cal.App.4th 371, 378.) Probable cause to search thus exists when, considering the totality of the circumstances, the "known facts and circumstances are sufficient to warrant a [person] of reasonable prudence in the belief that contraband or evidence of a crime will be found . . . ." (*Ornelas v. United States* (1996) 517 U.S. 690, 696 (*Ornelas*); *Illinois v. Gates* (1983) 462 U.S 213, 238; *People v. Farley* (2009) 46 Cal.4th 1053, 1098; *People v. Little* (2012) 206 Cal.App.4th 1364, 1371-1372.) A probable cause determination must be made using a practical, commonsense approach and must be based on objective facts. (*Ornelas, supra,* at pp. 695-696; *Maryland v. Pringle* (2003) 540 U.S. 366, 370; *Ross, supra,* 456 U.S. at p. 808.)

Here, police knew the following facts. There had recently been a rash of nighttime automobile burglaries in the area. The area was also known for "[a] lot" of drug activity. Persons who commit auto burglaries often store the loot in a nearby "layoff car." Dinkins was peering into a parked car, that did not belong to him, near midnight, in that neighborhood. Dinkins engaged in headlong flight when Officer Castro arrived. Dinkins had approximately $2,000 in cash, in $100 and $20 bills, in his pocket, a peculiarly large sum to be carrying under the circumstances. Dinkins's girlfriend's rental vehicle was parked nearby the car Dinkins had been peering into.[3]

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[3] Officers did not discover Dinkins had provided a false name or was on parole until after he was fingerprinted and booked at the police station, after the search transpired.

These facts, considered in the totality of the circumstances, were sufficient to " 'warrant a [person] of reasonable prudence in the belief that contraband or evidence of a crime' " would be found in the rental car. (See *People v. Hunter, supra,* 133 Cal.App.4th at p. 378.) Peering into another's parked car at night is somewhat unusual behavior. Doing so in a neighborhood known for recent automobile burglaries is considerably more suspicious. (See *People v. Evans, supra,* 200 Cal.App.4th at p. 754 [that a detention occurs in a high crime area may contribute to a finding of probable cause].) Dinkins's headlong flight from Officer Castro was "the consummate act of evasion" and highly suggestive of wrongdoing. (*Illinois v. Wardlow, supra,* 528 U.S. at p. 124; *In re H.M., supra,* 167 Cal.App.4th at p. 144.)[4] Dinkins was then found to have an unusually large wad of cash in his pocket. At this point, in our view, the officer's reasonable suspicion ripened into probable cause. Based on the foregoing, Castro could reasonably believe Dinkins was the auto burglar who had been plaguing the neighborhood. Based on Castro's knowledge of the habits of auto burglars, Castro could logically believe the fruits or instrumentalities of such burglaries would be found in the layoff car, that is, the rental car. (See *Ornelas, supra,* 517 U.S. at p. 700.) Additionally, the fact Dinkins was carrying such a large amount of cash in a neighborhood known for drug activity, coupled with his frantic flight from police, readily suggested he was engaged in drug activities. Officer Castro could prudently and logically infer that evidence of drug dealing would therefore be found in the car. While each of the pertinent facts, considered in isolation, might not have established probable cause, when

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[4] Dinkins correctly points out that *Wardlow* considered whether flight gave rise to a reasonable suspicion to detain, a less demanding standard than probable cause. (*Illinois v. Wardlow, supra,* 528 U.S. at pp. 122-123.) Certainly, the two standards are distinct. (See *Ornelas, supra,* 517 U.S. at pp. 695-696 [defining reasonable suspicion and probable cause].) We do not hold that flight alone is sufficient to establish probable cause (or even reasonable suspicion). However, flight is a factor that may figure into the probable cause calculus and may, when coupled with other circumstances, establish probable cause. (See, e.g., *U.S. v. Pittman, supra,* 411 F.3d at p. 817; *U.S. v. Wadley* (5th Cir. 1995) 59 F.3d 510, 512; *U.S. v. Dotson* (6th Cir. 1995) 49 F.3d 227, 231.)

considered together they established a fair probability, warranting the officer's reasonable belief, that contraband or evidence of a crime would be found in the rental car. (*Maryland v. Pringle, supra*, 540 U.S. at p. 372 & fn. 2; cf. *U.S. v. Pittman, supra*, 411 F.3d at p. 817.)

Dinkins points to numerous cases in which different, and stronger, evidence was held to establish probable cause, such as when contraband is in plain view of officers or the vehicle was the instrumentality or scene of a crime. He argues the evidence here was not of that ilk. However, the fact stronger evidence was present in other cases does not negate the probable cause finding here. " '[P]robable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules' " (*Maryland v. Pringle, supra,* 540 U.S. at pp. 370-371), and each case must be considered on its own facts and circumstances. (*Ornelas, supra,* 517 U.S at p. 696.)

DISPOSITION

The petition is denied. The stay previously ordered is lifted.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.