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

THE PEOPLE, Plaintiff and Respondent, v. ANDREW ACOSTA, Defendant and Appellant.	B275629 (Los Angeles County Super. Ct. No. BA442438)

APPEAL from a judgment of the Superior Court of Los Angeles County. Bernie C. Laforteza, Judge. Affirmed.

Kevin Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Michael Katz, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Andrew Acosta (defendant) appeals from his conviction of unlawful possession of a firearm, challenging only the trial court's denial of his motion to suppress evidence. He contends that the arresting officer failed to articulate facts demonstrating an objectively reasonable suspicion that defendant was engaged in the unlawful activity cited as grounds for a traffic stop. Finding no merit to defendant's contention, we affirm the judgment.

BACKGROUND

Defendant was charged with carrying a loaded, unregistered handgun, in violation of Penal Code section 25850, subdivision (a). After the trial court denied his suppression motion pursuant to section 1538.5, defendant pled no contest to the charge, and on June 15, 2016, the trial court suspended imposition of sentence, placed defendant on three years' probation under certain terms and conditions which included serving 90 days in jail, and awarded nine days of combined presentence custody credit. Defendant filed a timely notice of appeal from the judgment.

At the hearing on defendant's motion, the prosecution presented the testimony of Los Angeles Deputy Sheriff Joe Carbajal. Deputy Carbajal testified that he and his partner were driving southbound on December 19, 2015, at approximately 10:00 p.m., when he saw defendant's car travelling northbound on Fetterly Avenue. Dark window tint which prevented Deputy Carbajal from seeing inside defendant's car, caused the deputy to think the window was illegally darkened, so he made a three-point turn because the street "was a bit small" in order to change directions and conduct a traffic stop. The deputy testified that Fetterly Avenue was a two-way street, with traffic running north and south; he then called it "a one-lane street." Fetterly Avenue ran through a partially residential, partially commercial

neighborhood, and Deputy Carbajal could not recall whether there was a line down the middle of the street. He agreed that it could have been like other two-way residential streets with no line.

As the deputy drove behind defendant's car, it "swerved over the center median of the lane," which he considered "lane straddling," and a violation of the Vehicle Code. For that reason and because of the suspected illegal window tint, the deputies conducted a traffic stop. They determined that defendant had no license to drive or other proper identification in his possession, and his passenger had no driver's license. Once they decided to arrest defendant and have the car stored, the deputies conducted an inventory check of the car. After Deputy Carbajal found a fully loaded .38-caliber revolver under the driver's seat, he arrested defendant for carrying a loaded firearm concealed in a vehicle. At defendant's request, Deputy Carbajal then contacted defendant's father, who came to collect the car.

During cross-examination Deputy Carbajal was shown four photographs of a car, exhibits A, B, C, and D, which appeared to have been taken in daylight. The deputy did not recognize the car in A, B, or C as the car defendant was driving the night of his arrest, but the car depicted in exhibit D resembled defendant's car, was the same color, and had the same the license plate number. Deputy Carbajal could see that the windows were tinted, but could not recall if the window tint looked the same at the time of the arrest. Further, he agreed that not all window tint was illegal. Deputy Carbajal thought that it was legal to darken the back side windows, but not the front side windows.

DISCUSSION

I. Standard of review

Defendant contends that the trial court should have granted his motion to suppress the firearm on the ground that

the traffic stop and his detention violated the Fourth Amendment. In particular, defendant argues that Deputy Carbajal failed to articulate an objectively reasonable suspicion that defendant's driving violated any law.

"[A]n officer may stop and detain a motorist on reasonable suspicion that the driver has violated the law. [Citations.] 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.] [¶] Reasonable suspicion is a lesser standard than probable cause, . . . [b]ut to be reasonable, the officer's suspicion must be supported by some specific, articulable facts that are 'reasonably "consistent with criminal activity."' [Citation.] The officer's subjective suspicion must be objectively reasonable, and 'an investigative stop or detention predicated on mere curiosity, rumor, or hunch is unlawful, even though the officer may be acting in complete good faith. [Citation.]' [Citation.]" (*People v. Wells* (2006) 38 Cal.4th 1078, 1082-1083; see also *Terry v. Ohio* (1968) 392 U.S. 1, 22; *In re Tony C.* (1978) 21 Cal.3d 888, 892-894.)

Defendant suggests that we must independently review the facts because the trial court made no express findings of fact. We disagree, and note that the authorities cited by defendant do not so hold. (See *People v. Hernandez* (2008) 45 Cal.4th 295, 298-299 [trial court's resolution of factual inquiry reviewed under deferential substantial evidence standard]; *People v. Durazo* (2004) 124 Cal.App.4th 728, 734 ["we uphold any express or implied factual findings that are supported by substantial evidence"].)

We apply a deferential substantial evidence standard of review even where the trial court's findings were not express.

(See *People v. Weaver* (2001) 26 Cal.4th 876, 924.) "'In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]' [Citation.]" (*Ibid.*)

"As the finder of fact in a proceeding to suppress evidence (Pen. Code, § 1538.5), the superior court is vested with the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences in deciding whether a search is constitutionally unreasonable. [Citation.] Accordingly, in reviewing the instant suppression order, we consider the record in the light most favorable to defendants as respondents since 'all factual conflicts must be resolved in the manner most favorable to the [superior] court's disposition on the [suppression] motion.' [Citation.]" (*People v. Woods* (1999) 21 Cal.4th 668, 673.)

II. "Lane straddling"

Defendant contends that Deputy Carbajal could not articulate a reasonable suspicion that defendant violated Vehicle Code section 21658, subdivision (a),[1] because there was no painted line on the street. Section 21658, subdivision (a), provides: "Whenever any roadway has been divided into two or more clearly marked lanes for traffic in one direction, . . . [¶] [a] vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from the lane until such movement can be made with reasonable safety."

Deputy Carbajal did not remember whether there was a visible line down the middle of the street, but it was a two-way street, and the deputy observed defendant's car swerve over the center of the street, which he called "lane straddling," a violation

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[1] All further statutory references are to the Vehicle Code unless otherwise indicated.

of the Vehicle Code. Deputy Carbajal did not specify, however, what particular Vehicle Code section he had in mind, and at no time did he mention section 21658. As respondent points out, what Deputy Carbajal described was a violation of section 21650, which requires driving on the right side of the road and does not mention markings or dividers.

Defendant counters, in essence, that because Deputy Carbajal referred to the swerving of defendant's car over the center of the lane as "lane straddling," the stop could be justified only by a reasonable suspicion that defendant was violating section 21658 and not some other provision. He reasons that because a federal court has referred to section 21658 as "'California's "lane straddling" statute,'" the term "straddling" necessarily applies only to section 21658. (See *United States v. Colin* (9th Cir. 2002) 314 F.3d 439, 441-443.) In that case, however, there was no language indicating that "straddling" was a legal term with a specific definition; nor did the court compare section 21658 with section 21650, or even mention section 21650. Further, while the other cases upon which defendant relies discussed section 21658 or its predecessor, former section 526, neither involved the legality of a traffic stop or a legal definition of "straddling." (See *Moore v. Miller* (1942) 51 Cal.App.2d 674, 682 [swerve was not a violation of section 526, but rather, another statute]; *People v. Butler* (1978) 81 Cal.App.3d Supp. 6, 7-8 [violation occurs when driver either straddles a lane or changes a lane unsafely].)

We reject defendant's characterization of the issue as involving a mistake of fact or law,[2] as defendant has not

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[2] A mistake of fact occurs when the facts turn out to be not what the officer thought, while a mistake of law occurs when the law turns out to be not what the officer thought. (*Heien v. North Carolina* (2014) __ U.S. __ [135 S.Ct. 530, 538] (*Heien*).)

demonstrated that an officer must articulate a particular Vehicle Code section or use particular jargon when explaining the unlawful activity he suspected; nor has he demonstrated that swerving into the opposite lane is not a violation of any law. "'The reasonableness of a detention does not depend on the precise words which an officer on the stand chooses to describe his state of mind at the scene . . . .' [Citation.]" (*People v. Leyba* (1981) 29 Cal.3d 591, 597.) Indeed, the officer's subjective state of mind is irrelevant "'"as long as the circumstances, viewed *objectively,* justify [the] action." [Citation.]'" (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 145.) And regardless, a mistake as to which *provision* of law the defendant violated does not, by itself, render the suspicion unreasonable. (*People v. Smith* (1984) 151 Cal.App.3d 89, 98-99.) It follows that even if we were to agree that "straddling" could refer only to section 21658, a mistake as to the accepted jargon used to describe that provision would not have any effect on determining whether a suspicion was reasonable.

Defendant also contends that Deputy Carbajal could not have reasonably suspected a violation of section 21650, because the evidence supported an exception in that statute to the requirement of driving on the right-hand side of the street, "[w]hen the roadway is not of sufficient width." (§ 21650, subd. (e).) Deputy Carbajal testified that because the road was "a bit small," the deputies' U-turn was actually a three-point turn. He ambiguously testified that Fetterly Avenue was a "two-lane" street that ran north and south, and then called it "a one-lane" street. Defendant argues that this testimony showed that his swerve came within the exception.

As stated, we must view the evidence in the light most favorable to the trial court's ruling and defer to the court's resolution of any conflicts in the testimony and to the court's

reasonable factual inferences. (*People v. Woods*, *supra*, 21 Cal.4th at p. 673.) The fact that a police cruiser of unknown size had to make a three-point turn instead of a U-turn does not compel the inference that the street was too narrow to keep to the right of center. Deputy Carbajal testified that he saw defendant's car as it was traveling north and the deputies were traveling south on the same street, and that he was able to notice the tint on the windows on both sides of the car. The trial court could reasonably infer that the street was a two-lane street, albeit unmarked, that it was wide enough to travel to the right of center, and that indeed, the two cars passed by one another. Substantial evidence thus supported the trial court's conclusion that it was objectively reasonable to suspect that the swerve over the center of the street violated the law.

III. Tinted windows

Defendant contends that the evidence did not support a finding that Deputy Carbajal could reasonably suspect that defendant's car had unlawfully tinted windows, as opposed to lawfully tinted windows. We have already concluded that Deputy Carbajal's observation of the swerve to the left supported a reasonable suspicion that defendant had violated the law, and thus justified the stop. Nevertheless, we consider this contention, and find it to be without merit as well.

The front driver and passenger side windows may be tinted so long as there remains a minimum light transmittance of 70 percent. (§ 26708, subd. (d)(2).) A peace officer may stop a motorist based on a reasonable suspicion that the vehicle's windows are illegally tinted. (*People v. Carter* (2010) 182 Cal.App.4th 522, 529; see *People v. Niebauer* (1989) 214 Cal.App.3d 1278, 1293, fn. 10.)

Defendant asserts that Deputy Carbajal did not articulate any reasonable basis to believe that the tint on defendant's

windows was illegal. Defendant compares the facts of this case to those in *People v. Butler* (1988) 202 Cal.App.3d 602 (*Butler*), where the appellate court found no facts in the record to suggest that the police officer had a reasonable suspicion that the windows of the car he stopped "were made of illegally tinted, rather than legally tinted, safety glass," because the officer observed the car from a distance late at night and "simply admitted that he 'didn't like the idea of the tinted windows.'" (*Id.* at p. 606.) The court concluded: "Without additional articulable facts suggesting that the tinted glass is illegal, the detention rests upon the type of speculation which may not properly support an investigative stop. [Citations.]" (*Id.* at p. 607.)

Defendant's comparison with *Butler* fails, as Deputy Carbajal did, in fact, articulate additional facts. As respondent observes, unlike the officer in *Butler*, Deputy Carbajal testified that the windows were dark and appeared to be illegally tinted, and that he could not see inside the car. Also unlike the officer in *Butler*, who saw the defendant's car from a distance as it "sped past him," Deputy Carbajal saw defendant's car as they passed on the same narrow street. (*Butler*, *supra*, 202 Cal.App.3d at pp. 606-607.) Defendant argues that Deputy Carbajal's inability to see inside the car was a "distinction without a difference." We disagree. The inability to see through darkly tinted windows provided additional facts to support a finding that the suspicion of illegally tinted windows was objectively reasonable. (See *People v. Niebauer supra*, 214 Cal.App.3d at pp. 1292-1293, & fn. 10, [windows darker than normal and officer could see only outline of defendant through window]; cf. *People v. Roberts* (2010) 184 Cal.App.4th 1149, 1190-1191 [officer "could not see through the driver's tinted side window from the open passenger side window"]; *People v. Hanes* (1997) 60 Cal.App.4th Supp. 6, 10

[dark tint appeared black prevented officer from seeing front seat occupants as vehicle passed slowly in front of him].)

Defendant also contends that the windows were not in fact illegally tinted, and thus did not provide an objectively reasonable suspicion for a traffic stop. Defendant contends that this was *conclusively* shown below with four defense photographs. The photographs depict a car with very dark window tint on the back side and rear windows, and tint on the front side windows which does not appear to be as dark. The photographs do not conclusively establish that the windows were not illegally tinted at the time of the stop, as they were all taken in daylight at an unknown time and place, with the driver's side window partially down. Further, Deputy Carbajal recognized just one of them as depicting defendant's car, and he could not recall whether the window tint looked the same on the night of defendant's arrest, which was nearly six months before the hearing. The photographs thus do not establish or even provide substantial evidence that the light transmission of the front side windows was at least 70 percent.

In any event, we reject defendant's suggestion that if viewed in hindsight, an officer's good-faith *reasonable* belief that something is illegal turns out, upon further investigation, to be legal, the stop violates the Fourth Amendment. The Fourth Amendment does not require that the officer conduct scientific tests to measure light transmittance prior to conducting a stop, "nor do we expect them to discuss the sufficiency or insufficiency of the light transmittance as if they were an expert witness on the subject." (*People v. Niebauer, supra*, 214 Cal.App.3d at p. 1292.) "The question . . . is not whether [defendant's] vehicle was in fact in full compliance with the law at the time of the stop, but whether [the officer] had "'articulable suspicion'" it was not. [Citations.]" (*People v. Saunders* (2006) 38 Cal.4th 1129, 1136.)

"A traffic stop is lawful at its inception if it is based on a reasonable suspicion that *any* traffic violation has occurred, even if it is ultimately determined that no violation did occur. [Citations.] The officer's duty is to resolve -- through investigation -- any ambiguity presented as to whether the activity observed is, in fact, legal or illegal. [Citation.]" (*Brierton v. Department of Motor Vehicles* (2005) 130 Cal.App.4th 499, 510.) ""[R]easonableness," with respect to this necessary element, does not demand that the government be factually correct in its assessment.'" (*Saunders*, *supra,* at p. 1136, quoting *Illinois v. Rodriguez* (1990) 497 U.S. 177, 184.) "Moreover, '[the] possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the principal function of his investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal -- to "enable the police to quickly determine whether they should allow the suspect to go about his business or hold him to answer charges. [Citation.]"' [Citations.]" (*People v. Leyba*, *supra*, 29 Cal.3d at p. 599.)

Defendant contends that the stop cannot be justified as a mistake of fact or law, and he attempts to distinguish the recent decision by the United States Supreme Court extending the reasoning of Fourth Amendment precedents regarding reasonable mistakes of fact, to similarly reasonable mistakes of law. (See *Heien*, *supra*, 135 S.Ct. at pp. 536-538.) We need not consider mistake as a justification, as we have already found substantial evidence to support the trial court's finding that Deputy Carbajal articulated an objectively reasonable suspicion that two violations of law justified the stop.

DISPOSITION

The judgment is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.*
GOODMAN

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