Filed 1/24/18 P. v. Allen CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. MANDY LEON ALLEN, Defendant and Appellant.	B269938 (Los Angeles County Super. Ct. Nos. KA106791 and KA107394)

APPEAL from a judgment of the Superior Court of Los Angeles County, Juan Carlos Dominguez, Judge. Affirmed and remanded with directions.

Janet Gusdorff, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, and Shawn McGahey Webb and Gary A. Lieberman, Deputy Attorneys General, for Plaintiff and Respondent.

Mandy Leon Allen appeals from his judgment of conviction of two counts of possession of methamphetamine for sale (Health & Saf. Code, § 11378) and one count of transportation of methamphetamine for sale (Health & Saf. Code, § 11379, subd. (a)). Allen raises the following arguments on appeal: (1) the trial court abused its discretion in denying his motion to sever trial on the charges arising from two drug-related arrests; (2) the trial court erred in denying his motion to suppress evidence seized in an unduly prolonged traffic stop; and (3) the trial court may have erred in determining that there was no discoverable material in the personnel file of one of the arresting officers. We affirm the judgment of conviction, but remand the matter to the trial court for resentencing.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. The Charges

In an amended information consolidating Los Angeles County Superior Court case numbers KA106791 and KA107394, Allen was charged with possession of methamphetamine for sale on June 6, 2014 (count 1), possession of methamphetamine for sale on September 5, 2014 (count 2), and transportation of methamphetamine for sale on September 5, 2014 (count 3). It was alleged that Allen had eight prior felony convictions (Pen. Code, §§ 1203, subd. (e)(4)); had served eight prior prison terms (Pen. Code, § 667.5, subd. (b)); had three prior convictions for violations of Health and Safety Code sections 11378, 11379, and 11379.6 (Pen. Code, §§ 1203.07, subd. (a)(11); Health and Saf. Code, § 11370.2); and was released on bail when he committed the September 5, 2014 offenses (Pen. Code, § 12022.1). Allen

pleaded not guilty to each count and denied the enhancement allegations.

II. The Evidence At Trial

A. Possession of Methamphetamine for Sale on June 6, 2014 (Count 1)

On June 6, 2014, at about 9:00 p.m., West Covina Police Officer Joseph Melnyk observed Allen in the parking lot of a McDonald's restaurant. Allen was eating food while sitting on a curb next to a motorcycle. Officer Melnyk approached Allen and asked if the motorcycle belonged to him. Allen answered that it did. Officer Melnyk then asked Allen if he had any weapons on him. Allen told the officer that he had a pocketknife, but denied having any other weapons. For safety reasons, Officer Melnyk asked Allen if he could search him for weapons, and Allen consented to the search.

Allen stood up, placed his hands behind his head, and bent forward at the waist. Officer Melnyk instructed Allen to place his hands behind his back instead. At trial, the officer explained, "Typically . . . I have two ways of searching people. One would be if they come up and put their hands behind their back, I will have them put their hands behind their head and vice versa. Because sometimes people are trained on how to get out of our control holds and when we go to search them they turn and they're ready to fight." As Allen was placing his hands behind his back, Officer Melnyk pushed Allen's waist forward. A bag then fell out of Allen's jacket onto the ground. Inside that bag were three smaller bags. One of the bags contained over 12 grams of methamphetamine, and the other two bags each contained about one gram of methamphetamine.

Allen told Officer Melnyk that he had "fucked up" and "needed the money." When Officer Melnyk asked Allen if he was selling methamphetamine, Allen answered, "Yeah." Officer Melnyk then placed Allen under arrest. During a search of Allen's person, Officer Melnyk found $174 in denominations of $20, $5, and $1 bills. He did not find a methamphetamine pipe or injection device during the search.

At trial, Officer Melnyk testified that he had been a police officer for nine years and had investigated over 90 cases related to the sale of methamphetamine. Officer Melnyk opined that Allen had possessed the methamphetamine for sale, and explained the basis for his opinion as follows: "One of the biggest things for me was the different packaging. So he had the 13 grams in the large bag. And then there was two separate bags that contained about one gram each. So that was a huge factor. The . . . currency he had, typically twenties, people buy things in twenties, that's what we see with the street level narcotics[,] and also the statement saying that he had F'd up and he was selling."

B. Possession and Transportation of Methamphetamine for Sale on September 5, 2014 (Counts 2 and 3)

On September 5, 2014, three months after Allen's arrest, Covina Police Officer Terrence Hanou observed Allen exiting the driveway of the Monte Carlo Inn on his motorcycle. The Monte Carlo Inn was a known narcotics location. Officer Hanou, who had been monitoring traffic in the area, decided to conduct a traffic stop of Allen because Allen had twice failed to use his turn signal. While following Allen in his patrol car, Officer Hanou also observed Allen making odd movements with his left hand. Concerned that Allen might try to flee, Officer Hanou requested a

second unit to assist him. Officer Hanou activated his patrol car's overhead lights to initiate the traffic stop, and Allen complied by stopping his motorcycle in a nearby parking lot.

Officer Hanou exited his patrol vehicle and asked Allen for his driver's license, vehicle registration, and proof of insurance. When Allen produced a paper copy of his license, Officer Hanou became concerned that it might be fraudulent and decided to complete a field interview ("FI") card for Allen to document his identity. Officer Hanou had not had any prior contact with Allen, but recognized his name as that of a known drug dealer in the Covina area. For safety reasons, Officer Hanou instructed Allen to sit on the front push bars of the patrol car rather than remain on the motorcycle where he could more readily access a weapon or drive away. As Officer Hanou was filling out the FI card, a backup officer arrived on the scene. At that point, Officer Hanou observed a pocketknife in Allen's right rear waistband. Officer Hanou asked Allen if he had any weapons on him, and in response, Allen lifted up the left side of his shirt, which was not the side where the knife was located. At Officer Hanou's direction, the other officer removed the knife from Allen's rear waistband. Officer Hanou then conducted a pat-down search of Allen for any other weapons.

During the pat-down search, Officer Hanou noticed a large bulge in Allen's right rear pocket. Although the object appeared to be a wallet, Officer Hanou was concerned that it might contain a concealed weapon because it was two and a half inches thick. Officer Hanou removed the wallet from Allen's pocket and placed it on the hood of the patrol car. As the wallet lay on the hood of the car, it opened up and revealed a large sum of cash. Officer

Hanou then instructed Allen to sit on the curb next to the patrol car while he asked Allen some questions.

Officer Hanou asked Allen why he was coming from the motel and if he recently had used methamphetamine. Allen admitted that he had used the drug the previous night. Officer Hanou also inquired if Allen had anything illegal on his motorcycle. Allen initially answered that he had some marijuana, but then said, "Maybe I don't." When Officer Hanou asked Allen if he could search his motorcycle, Allen stated, "No, I don't want you to." In response, Officer Hanou told Allen that if there were drugs on the motorcycle, he could "bring out a narcotics detecting dog and detect that contraband." Allen then admitted that he had some methamphetamine and marijuana hidden between the front visor and the gauges of his motorcycle. Following that admission, Officer Hanou placed Allen under arrest.

During a subsequent search of Allen's motorcycle, Officer Hanou recovered a small nylon pouch. Inside the pouch was a plastic bag containing about three grams of methamphetamine. The pouch also contained some edible marijuana. Officer Hanou found a total of $1,700 in cash inside Allen's wallet, including $1,000 in $20 bills wrapped in a rubber band. Officer Hanou did not find any drug ingestion paraphernalia during the search.

Officer Hanou later conducted an interview with Allen in police custody. After waiving his *Miranda*[1] rights, Allen told the officer that the methamphetamine found on his motorcycle belonged to him and was for his personal use. When asked about the money found in his wallet, Allen stated that he planned to

---

1 *Miranda v. Arizona* (1965) 382 U.S. 925.

use the $1,000 bundle to buy two ounces of methamphetamine, which he would then sell at a higher price to pay a bail bondsman. Allen also said that he sold methamphetamine to support his drug habit and to pay his bills.

At trial, Officer Hanou testified that he had been a police officer for 16 years and had conducted hundreds of investigations involving methamphetamine. Officer Hanou opined that Allen had possessed the methamphetamine for sale rather than for personal use. In explaining the basis for his opinion, Officer Hanou stated that the quantity of methamphetamine found on Allen's motorcycle was an eighth of an ounce, which was "a very common weight that is sold to people" on the street. Officer Hanou further noted that the $1,000 bundle of cash found in Allen's wallet was comprised solely of $20 bills, which was a common denomination used in buying narcotics. Officer Hanou testified that he also based his opinion on Allen's admission that he sold methamphetamine to support his drug habit and pay his bills.

III. Verdict and Sentencing

At the conclusion of the trial, the jury found Allen guilty as charged on all three counts. In a bifurcated proceeding before the trial court, Allen admitted each enhancement allegation made pursuant to Penal Code section 667.5, subdivision (b), Penal Code section 12022.1, and Health and Safety Code section 11370.2.

The trial court sentenced Allen to county jail for an aggregate term of 12 years, consisting of the high term of four years on count 3; the mid-term of two years on count 1 to run concurrently with count 3; the mid-term of two years on count 2 stayed pursuant to Penal Code section 654; one consecutive two-

year enhancement pursuant to Penal Code section 12022.1; and two consecutive three-year enhancements pursuant to Health and Safety Code section 11370.2. Pursuant to Penal Code section 1385, the court struck one of the Health and Safety Code section 11370.2 enhancements, and each of the Penal Code section 667.5, subdivision (b) enhancements.

DISCUSSION

I. Motion to Sever the June 6, 2014 Charge from the September 5, 2014 Charges

Allen argues that the trial court abused its discretion when it denied his motion to sever trial on the charge arising from his June 6, 2014 arrest from the charges arising from his September 5, 2014 arrest. Allen also asserts that the alleged error in joining the charges had the effect of violating his federal constitutional rights to due process and a fair trial.

A. Relevant Background

On September 2, 2014, Allen was charged in case number KA106791 with one count of possession of methamphetamine for sale arising from his June 6, 2014 arrest. On October 28, 2014, while released on bail in case number KA106791, Allen was charged in case number KA107394 with one count of possession of methamphetamine for sale and one count of transportation of methamphetamine for sale arising from his September 5, 2014 arrest. The People thereafter filed an amended information, consolidating case numbers KA106791 and KA107394, and made an oral motion to consolidate the cases in the trial court. On December 11, 2014, Allen filed a motion to sever trial of case

number KA106791 from the two counts in case number KA107394.

At a hearing held on January 16, 2015, the prosecutor argued that the cases should be consolidated because the charges involved the possession of methamphetamine for sale, which was the same class of offense. The prosecutor also asserted that the strength of the evidence in each case was similar because Allen made incriminating statements about selling methamphetamine during both arrests. Defense counsel argued that consolidation of the cases would be prejudicial to Allen because the incidents involved separate law enforcement agencies, the evidence in each case was not cross-admissible, and joinder of the charges would allow the jury to impermissibly infer that Allen must have intended to sell the methamphetamine seized during his September 5, 2014 arrest because he had admitted to selling the drug during his June 6, 2014 arrest.

At the conclusion of the hearing, the trial court granted the People's motion to consolidate and denied Allen's motion to sever. The court stated: "Both cases are of the same class of cases. . . . [T]he court has not heard any information that [in] one case . . . the evidence is so overwhelming that it would unduly influence the jurors in looking at . . . the other case that has evidence that's much weaker. . . . [W]hat's represented by counsel is that each case seems to be equally strong, at least from the People's standpoint in terms of statements made by the defendant that show knowledge and motive for the possession for sale. Therefore, the motions are denied and the court finds there will be no prejudice and consolidation and that for judicial economy, that both matters can be tried together."

B. Relevant Law

"'The law favors the joinder of counts because such a course of action promotes efficiency.' [Citation.]" (*People v. Scott* (2015) 61 Cal.4th 363, 395.) Penal Code section 954, which governs the joinder of criminal counts, states in pertinent part: "An accusatory pleading may charge two or more different offenses connected together in their commission, . . . or two or more different offenses of the same class of crimes or offenses, under separate counts, . . . provided, that the court in which a case is triable, in the interests of justice and for good cause shown, may in its discretion order that the different offenses or counts set forth in the accusatory pleading be tried separately. . . ." (Pen. Code, § 954.) Where the threshold statutory requirements for joinder are met, the "'"defendant must make a clear showing of prejudice to establish that the trial court abused its discretion in denying [the] defendant's severance motion."' [Citation.] That is, [the] defendant must demonstrate the denial of his motion exceeded the bounds of reason. [Citation.]" (*People v. Capistrano* (2014) 59 Cal.4th 830, 848.)

"'Refusal to sever may be an abuse of discretion where: (1) evidence on the crimes to be jointly tried would not be cross-admissible in separate trials; (2) certain of the charges are unusually likely to inflame the jury against the defendant; (3) a "weak" case has been joined with a "strong" case, or with another "weak" case, so that the "spillover" effect of aggregate evidence on several charges might well alter the outcome of some or all of the charges; and (4) any one of the charges carries the death penalty or joinder of them turns into a capital case.' [Citation.]" (*People v. Scott*, *supra*, 61 Cal.4th at pp. 395-396.) "'In determining whether a trial court abused its discretion . . . in

declining to sever properly joined charges, "we consider the record before the trial court when it made its ruling.'" [Citation.]" (*People v. Thomas* (2012) 53 Cal.4th 771, 798.) "'A pretrial ruling that was correct when made can be reversed on appeal only if joinder was so grossly unfair as to deny due process.' [Citation.]" (*People v. Geier* (2007) 41 Cal.4th 555, 575.)

C. The Trial Court Did Not Err in Denying the Severance Motion

In challenging the denial of his severance motion, Allen does not dispute that the statutory requirements for joinder were satisfied in this case because both the June 2014 incident and the September 2014 incident involved the same class of drug-related offenses. Allen nevertheless contends that the trial court erred in refusing to sever the charges because the evidence in each case would not have been cross-admissible in separate trials, there was inflammatory evidence in each case, and the joinder of the charges resulted in a weak case being tried with a strong case so as to unfairly alter the outcome on all counts. We find no abuse of discretion in the trial court's ruling.

Allen argues that the evidence supporting the June 2014 case would not have been cross-admissible in a separate trial on the September 2014 case because any evidence concerning his prior possession of methamphetamine would have been subject to exclusion either as improper character evidence (Evid. Code, § 1101, subd. (a)) or as unduly prejudicial (Evid. Code, § 352). The Attorney General, on the other hand, asserts that the evidence would have been cross-admissible to show that Allen's intent in each instance was to sell the methamphetamine he possessed (Evid. Code, § 1101, subd. (b)). Even assuming,

without deciding, that the evidence supporting each case would not have been cross-admissible, it is well-established that "'the absence of cross-admissibility does not, by itself, demonstrate prejudice.'" (*People v. Vines* (2011) 51 Cal.4th 830, 856; see also *People v. Johnson* (2015) 61 Cal.4th 734, 751 ["absence of cross-admissibility cannot alone establish the substantial prejudice necessary to make severance mandatory"].) Where, as here, the charges were properly subject to joinder under Penal Code section 954, we must consider whether the other severance factors support a clear showing of prejudice. (*People v. Johnson*, *supra*, at p. 751; *People v. Trujeque* (2015) 61 Cal.4th 227, 259.)

Based on the record before the trial court, Allen has failed to demonstrate prejudice. Contrary to Allen's contention, none of the joined charges was unusually likely to inflame the jury against him. In both the June 2014 case and the September 2014 case, Allen was charged with one count of possession of methamphetamine for sale (Health & Saf. Code, § 11378). The September 2014 case included an additional count for transportation of methamphetamine for sale (Health & Saf. Code, § 11379, subd. (a)), but no other charges. The two incidents occurred within a period of three months and both arose out of routine detentions in which Allen was cooperative with the arresting officer and admitted that the drugs found belonged to him. While Allen claims the cumulative effect of joining the charges was to "paint [him] as a serial drug dealer," the relevant factor in ruling on a severance motion is whether one of the offenses "was especially likely, or more likely than the other, to inflame the jury's passions." (*People v. McKinnon* (2011) 52 Cal.4th 610, 631; see also *People v. Landry* (2016) 2 Cal.5th 52, 78 ["[t]he fact that evidence of two violent crimes might lead a

jury to infer that a defendant is violent does not establish that any of the charges were unusually likely to inflame the jury"].) Allen has not made the requisite showing in this case.

We likewise reject Allen's argument that his severance motion should have been granted because the evidence supporting the September 2014 case was significantly weaker than the evidence supporting the June 2014 case. Rather, the record shows that any disparity in the relative strength of the two cases was not sufficient to require severance. During the June 2014 incident, Allen admitted to Officer Melnyk that the methamphetamine he possessed at that time was for sale. He also told the officer that he had "fucked up" and "needed the money." The methamphetamine seized during that arrest had been packaged into three bags (one of which contained about 12 grams of the drug), and Officer Melnyk testified that such packaging was consistent with possession of the drug for sale. During the September 2014 incident, Allen likewise made incriminating statements about being a drug dealer. In particular, Allen admitted to Officer Hanou that he sold methamphetamine to pay his bills and support his drug habit (although he also claimed that the drug in his possession at that time was for his personal use). While the quantity of methamphetamine seized during the September 2014 arrest was only 3 grams, Officer Hanou testified that such amount was a "very common weight that is sold." Officer Hanou also testified that Allen was seen leaving a known drug location immediately prior to his arrest, and that he had in his wallet a bundle of $1,000 in $20 bills, which was a common denomination for drug sales. In addition, the police recovered no drug paraphernalia for ingesting methamphetamine from Allen during either arrest,

which could support an inference in each case that Allen possessed the drug for sale rather than personal use.

Consequently, on this record, Allen has not demonstrated that there was a substantial disparity in the strength of the two cases such that the "spillover" effect of the aggregate evidence might have altered the outcome of the trial, or resulted in one of the cases being more or unusually likely to inflame the jury. Because Allen has not made a clear showing of prejudice in the joinder of charges alleged against him, the trial court did not abuse its discretion or violate Allen's constitutional rights in denying his severance motion.

II. Motion to Suppress Evidence Seized During the September 5, 2014 Arrest

Allen contends that the trial court erred in denying his motion to suppress the evidence seized during his September 5, 2014 arrest because the seizure was the product of a prolonged detention in violation of his Fourth Amendment rights. Allen specifically claims that Officer Hanou detained him beyond the time necessary to complete a traffic stop so that the officer could conduct a narcotics investigation and did so without reasonable suspicion of criminal activity sufficient to justify the detention.

A. Relevant Background

Prior to trial, Allen filed a motion to suppress evidence.[2] At the hearing on the motion, the parties stipulated that the

---

[2] In his motion, Allen sought to suppress the evidence seized in both his June 6, 2014 arrest and his September 5, 2014 arrest. On appeal, however, Allen only challenges the trial court's denial of his motion with respect to the September 5, 2014 arrest.

September 5, 2014 stop, search, and arrest of Allen were without a warrant. The prosecution called Officer Hanou to testify about the circumstances surrounding the initial stop and the subsequent arrest of Allen and seizure of drugs from his motorcycle. The defense called one civilian witness who testified that Officer Hanou had stopped his vehicle for a false reason seven years earlier.

Following the testimony, the prosecution argued that the motion should be denied as to the September 5, 2014 incident because Officer Hanou had a reasonable suspicion that Allen had committed a traffic violation when he initiated the stop, and the officer did not unduly prolong the stop when he asked Allen some questions and conducted a pat-down search for weapons. The defense argued that the motion should be granted because Officer Hanou's testimony that Allen had committed a traffic violation was not credible, and the officer unreasonably prolonged the stop by filling out an FI card for Allen rather than a traffic citation. After hearing the argument of counsel, the trial court denied the motion to suppress. The court noted that Officer Hanou's account of the traffic stop was uncontroverted, and concluded it demonstrated that the detention of Allen was not unduly prolonged.

B. Relevant Law

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." (U.S. Const., 4th Amend.) In the context of a seizure made pursuant to a traffic stop, "[t]he law contemplates that the officer may temporarily detain the offender at the scene for the period of time necessary to discharge

the duties that he incurs by virtue of the traffic stop." (*People v. Tully* (2012) 54 Cal.4th 952, 981, quoting *People v. McGaughran* (1979) 25 Cal.3d 577, 584.) As the United States Supreme Court has observed, "[a] seizure for a traffic violation justifies a police investigation of that violation. . . . [T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission' – to address the traffic violation that warranted the stop, [citation], and attend to related safety concerns, [citation]. [Citations.] Because addressing the infraction is the purpose of the stop, it may 'last no longer than is necessary to effectuate th[at] purpose.' [Citations.] Authority for the seizure thus ends when tasks tied to the traffic infraction are – or reasonably should have been – completed." (*Rodriguez v. United States* (2015) 575 U.S. ___, ___, 135 S.Ct. 1609, 1614.)

"Beyond determining whether to issue a traffic ticket, an officer's mission includes 'ordinary inquiries incident to [the traffic] stop.' [Citation.] Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. [Citation.]" (*Rodriguez v. United States*, *supra*, 575 U.S. at p. ___ [135 S.Ct. at p. 1615].) Additionally, "[t]raffic stops are 'especially fraught with danger to police officers,' [citation], so an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely." (*Id.* at p. ___ [135 S.Ct. at p. 1616].) For instance, once a vehicle has been lawfully detained for a traffic violation, the officer may order the driver to get out of the vehicle, and may conduct a pat-down search of the driver for weapons if the officer reasonably believes that the driver might be armed and dangerous. (*Pennsylvania v. Mimms* (1977) 434

U.S. 106, 111-112; see also *Arizona v. Johnson* (2009) 555 U.S. 323, 331.)

When lawfully detaining a driver for a traffic violation, a police officer also may ask about "matters unrelated to the traffic stop so long as the questioning [does] not prolong the stop beyond the time required to cite" the driver for the violation. (*People v. Tully*, *supra*, 54 Cal.4th at p. 981; see also *People v. Gallardo* (2005) 130 Cal.App.4th 234, 238 ["'[i]nvestigative activities beyond the original purpose of a traffic stop are permissible as long as they do not prolong the stop beyond the time it would otherwise take'"].) "Questioning during the routine traffic stop on a subject unrelated to the purpose of the stop is not itself a Fourth Amendment violation" because "[m]ere questioning is neither a search nor a seizure. While the traffic detainee is under no obligation to answer unrelated questions, the Constitution does not prohibit law enforcement officers from asking. [Citations.]" (*People v. Brown* (1998) 62 Cal.App.4th 493, 499.) Accordingly, "[a]n 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." (*Arizona v. Johnson*, *supra*, 555 U.S. at p. 333.) "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.]" (*People v. Russell* (2000) 81 Cal.App.4th 96, 102.)

At trial, "'[a] defendant may move to suppress evidence on the ground that "[t]he search or seizure without a warrant was unreasonable."'" (*People v. Suff* (2014) 58 Cal.4th 1013, 1053.) "'In reviewing a suppression ruling, "we defer to the [trial] court's

express and implied factual findings if they are supported by substantial evidence, [but] we exercise our independent judgment in determining the legality of a search on the facts so found.'" [Citation.] [¶] Thus, while we ultimately exercise our independent judgment to determine the constitutional propriety of a search or seizure, we do so within the context of historical facts determined by the trial court. 'As the finder of fact . . . 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.] . . . '[W]e view the evidence in a light most favorable to the order denying the motion to suppress' [citation], and '[a]ny conflicts in the evidence are resolved in favor of the superior court ruling' [citation]." (*People v. Tully*, *supra*, 54 Cal.4th at p. 979.)

C. The Trial Court Did Not Err in Denying the Suppression Motion

Allen argues that Officer Hanou unreasonably prolonged the September 5, 2014 traffic stop by detaining him beyond the time necessary to issue a traffic citation. Allen asserts that, once Officer Hanou learned that he had a valid driver's license and no outstanding warrants, the officer should have issued the citation and allowed Allen to leave, but instead transformed a routine traffic stop into a narcotics investigation without having any reasonable suspicion that Allen was engaged in criminal activity. Allen thus contends that the prolonged detention violated his Fourth Amendment rights, and that any evidence seized during that detention should have been excluded at trial. Allen's claims lack merit.

At the suppression hearing, Officer Hanou testified about the circumstances surrounding his September 5, 2014 arrest of Allen and seizure of methamphetamine from Allen's motorcycle. According to Officer Hanou, he initiated the traffic stop because Allen twice failed to use his turn signal in violation of the Vehicle Code. When Officer Hanou asked Allen for his driver's license, vehicle registration, and proof of insurance, Allen provided "the proper paperwork," but produced "a paper I.D. . . ., not an actual hard copy I.D."[3] Concerned that Allen could readily access a concealed weapon or restart his motorcycle and drive off, Officer Hanou instructed him to sit on the front push bars of the patrol car. Allen, who was not handcuffed, complied with the instruction. Approximately two minutes into the stop, Officer Hanou "called [dispatch] to run [Allen] for warrants and also to see if his license was valid."

On appeal, Allen does not dispute that, at this point in the traffic stop, the actions taken by Officer Hanou were lawful. The officer was permitted to detain Allen based on a reasonable suspicion that he had committed a traffic violation, and to make such inquiries as checking Allen's license and registration and determining whether there were outstanding warrants against him. (*Rodriguez v. United States*, *supra*, 575 U.S. at p. ___ [135 S.Ct. at p. 1615].) For his own safety, Officer Hanou also was allowed to order Allen to get off the motorcycle and to wait in a secure area outside the patrol car while he conducted the traffic

---

[3] While acknowledging that a paper copy of a driver's license can be valid, Officer Hanou testified that it also can be suspicious because it is much easier to forge a piece of paper than a driver's license card embossed with the official California seal.

stop. (*Pennsylvania v. Mimms*, *supra*, 434 U.S. at p. 111, fn. 6; see also *People v. Lomax* (2010) 49 Cal.4th 530, 564 ["[o]nce a vehicle has been detained in a valid traffic stop, police officers may order the driver . . . out of the car pending completion of the stop without violating the Fourth Amendment"].)

While waiting for the "warrant check to come back," Officer Hanou began filling out an FI card for Allen. At the suppression hearing, Officer Hanou explained that the use of an FI card was "standard if we want to identify somebody, especially if they don't have a hard copy of a driver's license." The officer also testified that, in deciding to fill out an FI card for Allen, he considered the fact that Allen was seen leaving a known narcotics location immediately before the traffic stop. Approximately two minutes after the call to dispatch, Officer Hanou received a response that Allen had no outstanding warrants and that his license was valid. Officer Hanou could not recall at the suppression hearing whether he then completed the FI card for Allen. He recounted that, as he was filling out the FI card, he decided to search Allen for weapons because he noticed a pocketknife in Allen's right rear waistband. Upon observing the knife, Officer Hanou asked Allen if he had any weapons on him, and when Allen lifted up the left side of his shirt, the backup officer reached in and removed the knife from Allen. According to Officer Hanou, the removal of the knife occurred approximately five to six minutes into the traffic stop. Fearful that Allen might have another weapon on him, Officer Hanou decided to conduct a pat-down search for weapons at that time.

On appeal, Allen argues that, "[b]y filling out the [FI] card instead of a citation, Officer Hanou unreasonably prolonged his detention . . . in violation of the Fourth Amendment." In

particular, Allen asserts that, as soon as Officer Hanou heard back from dispatch that Allen had a valid driver's license and did not have any outstanding warrants, there was no lawful reason to further detain him. The record does not, however demonstrate that the detention was unduly prolonged. According to Officer Hanou's uncontroverted testimony, he promptly called dispatch for a license and warrant check, began filling out the FI card while awaiting a response, and heard back from dispatch within two minutes of his call. A mere one to two minutes after receiving the response from dispatch, the officers removed the knife from Allen's waistband and then began the pat-down search for other weapons. The fact that Officer Hanou did not immediately release Allen upon completing the license and warrant check does not establish that the officer acted unreasonably or "measurably extend[ed] the duration of the stop" beyond the time that it would otherwise take. (*Arizona v. Johnson*, *supra*, 555 U.S. at p. 333.) Rather, the evidence shows that, during the brief one to two minute period that elapsed between the response from dispatch and the removal of the knife, Officer Hanou asked Allen some questions for the FI card, observed that Allen had a knife in his waistband, and based on such observation, asked Allen if he had any weapons. There is no indication that Officer Hanou failed to act diligently in conducting the traffic stop during that initial period of detention.

Once Officer Hanou became aware that Allen was carrying a knife, he had a reasonable basis for conducting a pat-down search of Allen for other weapons. (*Terry v. Ohio* (1968) 392 U.S. 1, 30 [Fourth Amendment permits a limited search for weapons where the officer reasonably believes the person being detained might be armed and dangerous]; *People v. Mendoza* (2011) 52

Cal.4th 1056, 1082 [officer "acted in accordance with the Fourth Amendment" when he conducted a pat-down search of the defendant and his companions for weapons after observing one of them wearing a knife in a sheath].) Noting that possession of a pocketknife is not itself illegal, Allen contends that the pat-down search was a mere pretext for a prolonged detention. Officer Hanou testified, however, that he conducted the search based solely on a concern for safety,[4] and in ruling on the suppression motion, the trial court found that it had no reason to "question his credibility." While Allen claims that the officer's stated reason for the search was pretextual, it was the exclusive province of the trial court to evaluate the credibility of the witnesses and the weight to be accorded their testimony.

During the pat-down search, Officer Hanou discovered a wallet, which was about two and a half inches thick, in Allen's rear pocket, and decided to remove the wallet to make sure it did not contain a concealed weapon. When Officer Hanou placed the wallet on the hood of his patrol car, it partially opened, revealing a large sum of cash. Upon seeing the cash, Officer Hanou decided to ask Allen some additional questions. Officer Hanou specifically asked Allen why he was at the hotel, if he recently

---

[4] At the suppression hearing, Officer Hanou explained why the pocket knife in Allen's waistband led the officer to conduct a pat-down search for other weapons: "We call it the 'plus one' rule. That is, if you find one weapon, you continue to search and . . . attempt to find a second one if they have it. There's been numerous cases where officers have searched a subject, and they'll find one gun on them. They'll find a second gun in a different portion of the body or they'll find two knives in two separate portions of the body. . . . It's for our safety and it's for the safety of the subjects that we have detained."

had used methamphetamine, and if he had anything illegal on his motorcycle. Although Allen was under no obligation to answer these questions, he told Officer Hanou that he had used methamphetamine the previous night, and that he might have some marijuana hidden in his motorcycle but was not sure. When Officer Hanou asked Allen if he could search the motorcycle, Allen answered, "No, I don't want you to." Officer Hanou then told Allen that, if he had contraband concealed on his motorcycle, it could be found using a narcotics detecting dog. In response to that comment, Allen admitted that he had some methamphetamine concealed between the visor and the gauges of his motorcycle. According to Officer Hanou, the total time that elapsed between his initial contact with Allen and his request to search the motorcycle was "six, seven, eight minutes tops."

Based on the large sum of cash in Allen's wallet and his admission to having methamphetamine on his motorcycle, Officer Hanou arrested Allen for possession and transportation of a controlled substance. Because Officer Hanou arrested Allen for these criminal offenses, he decided not to issue a citation for the traffic violation. After taking Allen into custody, Officer Hanou recovered the methamphetamine from his motorcycle. On appeal, Allen does not contend that Officer Hanou lacked probable cause to arrest him or a reasonable basis to search his vehicle incident to the arrest once Allen admitted that there was methamphetamine on his motorcycle. (See *People v. Zaragoza* (2016) 1 Cal.5th 21, 57 [probable cause for an arrest "is shown 'when the facts known to the arresting officer would persuade someone of "reasonable caution" that the person to be arrested has committed a crime"]; *Arizona v. Gant* (2009) 556 U.S. 332, 343 [police may search a vehicle incident to a lawful arrest when

it is "'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle'"].) Instead, Allen asserts that Officer Hanou improperly prolonged the detention beyond the time necessary to issue a traffic citation, and as a result, the subsequent search of the motorcycle and seizure of the methamphetamine were illegal under the Fourth Amendment.

Based on the circumstances present in this case, however, the overall duration of the traffic stop was reasonable and not unduly prolonged. (*People v. Gallardo*, *supra*, 130 Cal.App.4th at p. 238 ["[t]here is no hard-and-fast limit as to the amount of time that is reasonable; rather, it depends on the circumstances of each case"].) The total time that elapsed between the initial stop and the arrest of Allen was approximately eight minutes. Throughout that period of detention, Officer Hanou had a reasonable basis for taking the actions that he did based on the presence of a weapon on Allen's person and the information provided by Allen in response to the officer's questions. (*People v. Espino* (2016) 247 Cal.App.4th 746, 756 ["[i]f the police develop reasonable suspicion of some other criminal activity during a traffic stop of lawful duration, they may expand the scope of the detention to investigate that activity"]; *People v. Russell*, *supra*, 81 Cal.App.4th at p. 102 ["[c]ircumstances which develop during a detention may provide reasonable suspicion to prolong the detention"].) Although it is undisputed that Officer Hanou conducted "unrelated checks during an otherwise lawful traffic stop" (*Rodriguez v. United States*, *supra*, 575 U.S. at p. ___; 135 S. Ct. at p. 1615), the record does not demonstrate that those checks unreasonably or measurably prolonged the duration of the stop, or that the subsequent search of Allen's motorcycle was the product of an unlawful detention. Therefore, on this record, the

trial court did not err in denying Allen's motion to suppress the evidence seized during his September 5, 2014 arrest.

III. *Pitchess* Review

Prior to trial, Allen made a motion under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*) for a review of the personnel files of Officer Melnyk and Officer Hanou. The trial court granted the motion with respect to alleged acts of dishonesty, including the fabrication of probable cause and the falsification of police reports. After reviewing the records at an in camera hearing, the trial court ordered the disclosure of certain materials as to Officer Hanou, and found no discoverable material as to Officer Melnyk. On appeal, Allen has requested that we conduct an independent review of the sealed record to determine whether any discoverable material from Officer Melnyk's personnel file was withheld. We have reviewed the sealed record of the in camera proceedings, and conclude that the trial court properly exercised its discretion in finding that there was no discoverable material in Officer Melnyk's personnel file to be disclosed. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1229.)

IV. Health and Safety Code § 11370.2 Enhancements

In a supplemental brief, Allen contends the two three-year sentence enhancements imposed pursuant to section 11370.2 should be stricken by this Court based on a recent amendment to the statute. The Attorney General agrees these enhancements must be stricken, but requests that the matter be remanded to the trial court for a complete resentencing.

Senate Bill No. 180 (Stats. 2017, ch. 677), which became effective on January 1, 2018, amends section 11370.2 to limit the

scope of the enhancement to apply only to prior felony convictions for a violation of Health and Safety Code section 11380. Therefore, as amended, the enhancement no longer applies to Allen's prior convictions for violations of Health and Safety Code sections 11378, 11379, and 11379.6. Absent evidence to the contrary, it is presumed the Legislature intended an amended statute reducing the punishment for a criminal offense to apply retroactively to defendants whose judgments are not yet final on the statute's operative date. (*People v. Brown* (2012) 54 Cal.4th 314, 323; *In re Estrada* (1965) 63 Cal.2d 740, 745.) Because there is no indication that the recent amendments to Health and Safety Code section 11370.2 were intended to operate prospectively only, Allen's enhancements under the statute must be stricken.

While Allen asserts that this Court should use its authority under Penal Code section 1260[5] to strike the enhancements, the Attorney General argues that the matter should be remanded for the trial court to reconsider its entire sentencing scheme. Given that the trial court exercised some discretion in imposing the original sentence, we agree that the matter should be remanded for resentencing to permit the trial court to reconsider its sentencing choices in light of the changed circumstances. (*People v. Calderon* (1993) 20 Cal.App.4th 82, 88 ["[i]t is perfectly proper for [the appellate] court to remand for a complete resentencing after finding an error with respect to part of a sentence"].) On

---

5 Penal Code section 1260 provides, in relevant part, that an appellate court "may reverse, affirm, or modify a judgment or order appealed from, or reduce the degree of the offense or attempted offense or the punishment imposed, . . . and may, if proper, remand the cause to the trial court for such further proceedings as may be just under the circumstances."

remand, the trial court is directed to strike the two three-year enhancements imposed pursuant to Health and Safety Code 11370.2 and to resentence Allen in accordance with the applicable statues and rules, provided that the aggregate term does not exceed the original sentence. (*People v. Burbine* (2003) 106 Cal.App.4th 1250, 1256 ["trial judge's original sentencing choices did not constrain him or her from imposing any sentence permitted under the applicable statutes and rules on remand, subject only to the limitation that the aggregate prison term could not be increased"]; *People v. Burns* (1984) 158 Cal.App.3d 1178, 1184 [while "trial court is entitled to reconsider its entire sentencing scheme[,] . . . appellant may not be sentenced on remand to a term in excess of his original sentence"].)

DISPOSITION

The matter is remanded to the trial court for resentencing in accordance with the principles expressed in this opinion. The judgment of conviction is affirmed, and the sentence vacated.

ZELON, J.

We concur:

PERLUSS, P. J. BENSINGER, J.*

---

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