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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

PHILLIP CHARLES RAYBON, JR.,

Defendant and Appellant.

2d Crim. No. B236937
(Super. Ct. No. 1332425)
(Santa Barbara County)

Phillip Charles Raybon, Jr., appeals his conviction by plea of possession of a concealed weapon (Pen. Code, § 12020, subd. (a)(4));[1] possession of marijuana (Health & Saf. Code, § 11357, subd. (a)); transportation of marijuana (Health & Saf. Code, § 11360, subd. (a)); and carrying a switch-blade knife (§ 653k), which he entered after the trial court denied his motion to suppress evidence.[2] The court reduced appellant's felony charges to misdemeanors (§ 17, subd. (b)), and placed him on three years of unsupervised probation. We conclude that the trial court properly denied his motion to suppress evidence (§ 1538.5) and affirm.

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

[2] Former sections 12020, subdivision (a)(4), and 653k were repealed, effective January 1, 2012. Their substantive provisions are now in other sections. (See, e.g., § 21310 (former § 12020, subd. (a)(4)), and §§ 21510, 17235 & 16965 (former § 653k).) All further references to section 12020 and 653k are to the former sections.

FACTS AND PROCEDURAL HISTORY

At the hearing on the motion to suppress evidence (§ 1538.5), Santa Barbara County Sheriff's Deputy Garrett Teslaa testified that he saw a man in front of a 7-Eleven store in Old Town Goleta, in the afternoon on April 30, 2010. The man, who was later identified as Thomas Brooks, was pacing back and forth and appeared to be waiting for someone. The area was known for gang activity.

Teslaa parked his unmarked patrol car in the north section of a parking lot across the street from the 7-Eleven. He saw appellant standing next to a car in the south portion of the same parking lot. Appellant made a telephone call. Brooks answered his cell phone almost immediately, scanned the area, saw appellant, then waved at and started walking toward him. Brooks crossed the street, outside the marked crosswalk, without yielding to oncoming traffic. A few cars slowed down to avoid hitting him. When Brooks reached the sidewalk, he noticed Teslaa's patrol car, and made eye contact with him. Brooks then turned left and walked away briskly.

Teslaa got out of his car, and started walking toward appellant, and the south section of the parking lot. Teslaa called out and asked him for Brooks' name. Appellant answered that he called him "Scout." Teslaa saw appellant drop something behind his right leg and try to kick it under the car. He seemed nervous and appeared to be trying to hide the dropped item quickly and subtly with his leg. Teslaa also saw appellant reach into the rear thigh pocket of his "carpenter" jeans, as if he were hiding or retrieving something. In addition, he saw a silver metal airtight container at appellant's feet. It appeared to be like those commonly used to store marijuana. It was not the same item that he saw appellant drop earlier.

Teslaa continued walking toward appellant, and saw him make "furtive" movements. He kept his hands out of Teslaa's sight for "quite some time." When he was within 10 or 15 feet of appellant, Teslaa smelled a strong odor of freshly burnt marijuana coming from appellant's car. Teslaa knew that drug traffickers often carried weapons. He was alone, and he believed that something was "either being hidden or concealed." Teslaa drew his weapon and ordered appellant to place his hands on the car. Appellant

complied. Teslaa ordered Brooks to come over to him, so he could avoid splitting his focus between appellant and Brooks. Brooks complied and, as directed, placed his hands on appellant's car. Teslaa handcuffed both men and told them that he was detaining them for further investigation.

Another deputy arrived and patted appellant down. He found a knife under appellant's t-shirt, behind his back, in a sheath attached to the belt of his pants. Teslaa arrested appellant for carrying a concealed weapon. (§ 12020, subd. (a)(4).) The deputies continued to search appellant and recovered six baggies of hashish, or dried marijuana, from the same pocket into which appellant had reached minutes earlier. Appellant admitted that the baggies contained hashish but said that he had a medical marijuana card.

While outside appellant's car, Teslaa noticed a glass jar that appeared to contain hashish in the center console. He then searched the car and located two more baggies of dried marijuana in a backpack in the backseat, a switchblade in the pocket behind the driver's seat, and other items, in addition to the baby jar with hashish. Appellant admitted that the dried marijuana belonged to him.

The trial court denied appellant's motion to suppress evidence. It found that after patting appellant down, and recovering a knife and marijuana, the deputies saw a container in the car that was consistent with marijuana possession. The court concluded that there was "probable cause to search the vehicle based on the evidence that was found on Mr. Raybon during a proper pat down search."

DISCUSSION

Appellant contends that his detention was unreasonable and that Teslaa lacked probable cause to arrest him. We disagree.

In our review of the trial court's ruling on the suppression motion, we affirm the factual findings that are supported by sufficient evidence. (*People v. Hughes* (2002) 27 Cal.4th 287, 327.) We independently determine, however, whether the challenged search or seizure is constitutional within the Fourth Amendment. (*Ibid*.)

A detention for the purpose of investigating possible criminal activity may be based on "'some objective manifestation' that criminal activity is afoot and that the person to be stopped is engaged in that activity." (*People v. Souza* (1994) 9 Cal.4th 224, 230.) Based upon the totality of the circumstances, "'the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" (*Ibid*.) In this case, the just-described facts provided a basis for Teslaa to suspect that appellant was engaged in criminal activity and to detain him. (*Ibid*.)

Citing *In re Antonio B.* (2008) 166 Cal.App.4th 435, 442, appellant argues that Teslaa exceeded the scope of a lawful detention when he drew his gun and handcuffed appellant and Brooks. Although "[t]he distinction between a detention and an arrest, 'may in some instances create difficult line-drawing problems'" (*People v. Celis* (2004) 33 Cal.4th 667, 674), stopping a suspect at gunpoint and handcuffing him does not necessarily convert a lawful detention into an arrest. (*Id.* at p. 675.) Handcuffs may be used when reasonably necessary during a detention, including situations where the suspect acts as if he may flee, or suspects outnumber an officer. (*People v. Stier* (2008) 168 Cal.App.4th 21, 27.)

Appellant's reliance on *Antonio B.* is unavailing. In *Antonio B.*, three police officers encountered two minors and handcuffed them. The officers' justification for using handcuffs was that they always handcuffed suspects while detaining them for further investigation. (*In re Antonio B., supra*, 166 Cal.App.4th at p. 439.) Under those circumstances, the reviewing court concluded that the officers exceeded the scope of a lawful detention. (*Id*. at p. 442.) Here, in contrast, Teslaa provided specific, articulable facts to support his use of handcuffs and a gun during the detention. (*People v. Stier, supra*, 168 Cap.App.4th at p. 27.) Teslaa was alone and outnumbered by two suspects; he could not simultaneously observe both suspects; they were in an area known for gang activity; one suspect, Brooks, had walked away after seeing Teslaa's patrol car; appellant had kept his hands out of Teslaa's sight for "quite some time"; and Teslaa knew that narcotics dealers often carried weapons.

Appellant further contends the trial court erred by denying his motion to suppress evidence from the search because there was not probable cause to support the search of his car. We disagree. In *Arizona v. Gant* (2009) 556 U.S. 332, the Supreme Court reshaped the law governing vehicle searches incident to arrest. (*Id*. at p. 335.) *Gant* held that police may search a vehicle incident to the arrest of an occupant in two circumstances: (1) "when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search" (*id*. at p. 343), or (2) when it is "'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" (*Ibid*.) Here, the deputies recovered several bags of marijuana from appellant while patting him down. In addition, there was a glass jar that appeared to contain hashish on the console of appellant's car, which was visible from outside the car. It was therefore "reasonable to believe" (*id* at p. 346) that evidence relevant to appellant's marijuana possession offense would be in his car. The search of his car was lawful, and the trial court properly denied his motion to suppress evidence. (*Id*. at p. 351).

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Brian E. Hill, Judge

Superior Court County of Santa Barbara

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