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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GERALD D. LONGMIRE,

Defendant and Appellant.

B266083

(Los Angeles County
Super. Ct. No. BA423778)

APPEAL from a judgment of the Superior Court of Los Angeles County, Anne H. Egerton, Judge. Affirmed.

Karyn H. Bucur, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Gerald D. Longmire appeals from the judgment entered following his plea of no contest to possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1)) with admissions he suffered a prior felony conviction and a prior felony conviction for which he served a separate prison term (Pen. Code, §§ 667.5, subd. (b) & 667, subd. (d)(1)), following the denial of his motion to suppress evidence (Pen. Code, § 1538.5). Appellant claims the trial court erroneously denied his suppression motion. We disagree and affirm the judgment.

DISCUSSION

On September 3, 2014, appellant filed a Penal Code section 1538.5 motion to suppress evidence, including a firearm and its ammunition, on the principal ground that the evidence was the product of an unlawful detention of appellant. The trial court heard and denied the motion on September 5, 2014.

1. Pertinent Facts and Proceedings.

a. Suppression Hearing Evidence.

Los Angeles Police Detective Brian Thayer was the sole witness at the suppression hearing. He testified as follows. On April 16, 2014, shortly before 8:40 p.m., Thayer and his partner were in a marked vehicle that Thayer was driving in the area of Santo Tomas Drive and Hillcrest Drive in Los Angeles County. Thayer and his partner were conducting extra patrol because gang members in that area recently had been shot by a rival gang.

When Thayer drove by Jim Gilliam Park, he saw a large group of people congregating where members of the Black P Stone gang commonly held gang meetings. Thayer also saw a Lexus ES 300 parked near the group. Thayer drove into the park's parking lot and recognized appellant in the group. Thayer

previously had interacted with appellant and knew he was a Black P Stone gang member. Thayer drove out of the parking lot and watched the group from a distance.

About 10 minutes later, the group dispersed and Thayer saw appellant enter the Lexus and drive eastbound on Santo Tomas Drive from the park. Thayer followed appellant as he drove east on Santo Tomas Drive and turned north onto West Boulevard. Thayer drove a short distance on West Boulevard and “observed the Lexus make a complete stop in the northbound lane without signaling or using hazard lights, impeding northbound traffic on West Boulevard, just north of Santo Tomas.” Thayer said appellant stopped “in the middle of the street,” about 25 yards north of Santo Tomas Drive. There was one northbound lane, one southbound lane, and a parking lane on West Boulevard.

In the area where appellant stopped, there was an open space at the curb. Thayer testified that most people who parallel park “turn on their turn signals or hazards if they see a car behind them,” giving a warning. Thayer testified appellant “just stopped completely in the road without doing any of that stuff.”

Thayer “pulled [his] vehicle behind,” stopped at the rear of the Lexus, and “activated [his] forward-facing red light to conduct a traffic stop for impeding traffic.” Thayer testified he did not remember whether, before he activated his emergency lights, he saw the Lexus’s reverse lights activate as if appellant was going to back up.

Appellant’s counsel asked how long appellant had been stopped before Thayer pulled up behind him and turned on his lights, and Thayer replied, “I’d estimate a few seconds.” Based on Thayer’s reply, counsel asked a question suggesting Thayer had

not given appellant much time to maneuver into the space. Thayer replied he did not know what appellant intended to do and “I just know he stopped in the middle of the street.”

Appellant’s counsel asked what traffic appellant was impeding, and Thayer replied, “He was impeding my flow of traffic to continue northbound.” Thayer did not remember whether there were any other cars on West Boulevard when he made the traffic stop.

The court asked Thayer if he knew the Vehicle Code section or sections that prohibited someone from impeding traffic or that required use of a turn signal. Thayer cited Vehicle Code section 22400, subdivision (a).¹ The court asked, “[w]hat about the turn signal?” Thayer replied he was not sure about that.

After activating his red light, Thayer approached the Lexus. He testified, “As I’m approaching the vehicle, I observed [appellant] looking over his left shoulder. His hands moved from down towards his side a few times, and he keeps looking over his left shoulder, which [*sic*] it appeared that he may be attempting to conceal an unknown item, possibly narcotics or weapons, so I stood back for a second and kept ordering him to put his hands up.”

When it was safe to approach the Lexus, Thayer and his partner did so and Thayer immediately smelled a strong odor of marijuana coming from the vehicle. Based on the odor, Thayer asked appellant to exit the vehicle and detained him for the

¹ Vehicle Code section 22400, subdivision (a) states in relevant part: “No person shall bring a vehicle to a complete stop upon a highway so as to impede or block the normal and reasonable movement of traffic unless the stop is necessary for safe operation or in compliance with law.”

traffic violation and a narcotics investigation. Thayer testified he did not remember whether appellant at some point told him that he was trying to park.

Thayer asked appellant if there was any marijuana in the Lexus. Appellant replied he “just smokes black [and] milds.”² Thayer conducted a narcotics search of the Lexus and recovered a loaded firearm under the front passenger side floorboard, just under the carpet. Thayer continued to smell marijuana while searching the Lexus, but did not find marijuana or related paraphernalia during the search. Appellant told Thayer that he possessed the loaded firearm for his protection, and he provided a written statement to that effect.

A “dash-cam video” was admitted into evidence as court’s Exhibit No. 1. The court reviewed the video following Thayer’s testimony.

b. Argument and Ruling.

The court stated it had viewed the video and had the following observations. When appellant stopped, there seemed to be a space at the right curb. Appellant did not activate a turn signal where he stopped. The court could not tell if there were “back-up lights” on the Lexus or whether the Lexus’s lights reflected lights from the police car. If one had a lot of room, one could pull forward into a parking space, but more typically one pulled forward, then backed into the space. The court observed, “But if someone is going to stop, and even if there’s really no one behind him except the police car, . . . I believe they’re supposed to put on their turn signal, if they’re going to then park, to signal to

² Thayer testified a “black and mild” could have several meanings, but it is generally a “cheap cigar wrap” that has brown paper and is often combined with marijuana.

other cars who may be coming behind them that they're parking." The court concluded if appellant was required to activate a turn signal and failed to do so, and Thayer smelled marijuana in the car, he was entitled to detain appellant and investigate.

Appellant's counsel argued the following. Appellant stopped the Lexus and Thayer pulled to a stop behind him almost simultaneously. By stopping behind appellant, Thayer prevented him from backing up into the available parking space. Appellant could have activated a turn signal, but Thayer "lit him up right then."

The court disagreed. The court observed appellant stopped and "if it were me, when I'm getting ready to stop, if I'm going to back into this parking space, I would put on my turn signal so that people coming behind me are going to know that I'm not just coming to a dead stop in the middle of traffic. I'm going to stop long enough for traffic to clear so I can then back into the space. [¶] [Thayer] pulled behind [appellant] maybe two seconds later, but by then, he's at a complete stop without putting on his turn signal."

Appellant's counsel argued appellant "was not, practically speaking, impeding any traffic" and "the only traffic that was behind him, that we know of, was that police car, and they weren't going anywhere other than to follow him." The court said the video showed that when the police car was following the Lexus on Santo Tomas Drive, a third car was between them, and the third car separated as appellant turned, "so it's not as if there was no other traffic in the area." Appellant's counsel asserted that, according to the video, there were no other cars on West Boulevard when the police pulled over appellant.

After the court researched the law, it indicated as follows. When appellant stopped his Lexus, there was at least one car behind him, it seemed appellant violated Vehicle Code section 22400 whether Thayer chose to stop or to go around him, and the officers “relied, it seems to me, legitimately on 22400.”

The court also noted the following. It might be true, as appellant’s counsel was arguing, that people could lawfully stop in a lane to back up and parallel park, but “we have no testimony to that effect because [appellant] didn’t testify.” The court heard appellant on the video say “he was parking, or something like that,” but Vehicle Code section 22109 seemed to require that if a driver stopped to parallel park, the driver had to signal.³ The court also said, “it’s very clear from the [video] that he did not put on his right turn signal.”

The court stated, “[the officers had] the right to stop and approach the car to cite him for the traffic violation.” The court noted that Thayer could be heard asking about marijuana odor on the video, and once Thayer smelled marijuana in the car, he had a right to search the car. The court concluded that discovery of the gun was the product of a valid search of the Lexus, and it denied the suppression motion.

2. The Court Properly Denied Appellant’s Motion.

Appellant claims the trial court erroneously denied his suppression motion. He argues the warrantless search of the

³ Vehicle Code section 22109 states: “No person shall stop or suddenly decrease the speed of a vehicle on a highway without first giving an appropriate signal in the manner provided in this chapter to the driver of any vehicle immediately to the rear when there is opportunity to give the signal.”

Lexus was unlawful because Thayer did not have a legal justification for stopping the vehicle. We disagree.

a. Applicable Law.

“ ‘ “A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained *may* be involved in criminal activity.” [Citation.] Ordinary traffic stops are treated as investigatory detentions for which the officer must be able to articulate specific facts justifying the suspicion that a crime is being committed.’ [Citation.] The motivations of the officer are irrelevant to the reasonableness of a traffic stop under the Fourth Amendment. [Citation.] ‘All that is required is that, on an objective basis, the stop “not be unreasonable under the circumstances.” ’ [Citation.]” (*People v. Suff* (2014) 58 Cal.4th 1013, 1053-1054 (*Suff*), italics added.)

In *People v. Letner and Tobin* (2010) 50 Cal.4th 99, 147 (*Letner*), our Supreme Court observed the reasonable suspicion standard of *Terry v. Ohio* (1968) 392 U.S. 1 [20 L.Ed.2d 889] is not particularly demanding. (*Letner*, at p. 146.) *Letner* also observed, “ ‘the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior.’ [Citation.]” (*Ibid.*) *Letner* also stated, “possible innocent explanations for an officer’s observations do not preclude the conclusion that it was reasonable for the officer to suspect that criminal activity was afoot. ‘ “Indeed, the principal function of [police] investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal” [Citation.]’ ([Citations].)” (*Id.* at p. 148.)

Further, “ ‘[A]lmost without exception in evaluating alleged violations of the Fourth Amendment the [high court] has first undertaken an objective assessment of an officer’s actions in light of the facts and circumstances then known to [the officer].’ ” (*People v. Sanders* (2003) 31 Cal.4th 318, 334.) Further still, “ ‘ “[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer’s action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.” ’ [Citation.]” (*People v. Woods* (1999) 21 Cal.4th 668, 680.)

A warrantless search is presumed to be unreasonable, and the prosecution has the burden of establishing a legal justification for the search. (*People v. Redd* (2010) 48 Cal.4th 691, 719.) When reviewing a ruling on a Penal Code section 1538.5 suppression motion, we defer to the trial court’s express and implied factual findings to the extent they are supported by substantial evidence, and exercise our independent judgment as to whether a search or seizure was reasonable under the Fourth Amendment based on the facts so found. (*Suff, supra*, 58 Cal.4th at p. 1053.)

b. Analysis.

The trial court concluded Thayer lawfully detained appellant to investigate whether he violated Vehicle Code section 22400, subdivision (a), which makes it unlawful to “bring a vehicle to a complete stop upon a highway so as to impede or block the normal and reasonable movement of traffic unless the stop is necessary for safe operation or in compliance with law.” The court’s conclusion was proper under the totality of circumstances presented by the evidence.

Thayer testified he saw appellant's Lexus make a full stop in the only northbound lane on West Boulevard. There is no dispute that appellant "[brought] a vehicle to a complete stop upon a highway" within the meaning of Vehicle Code section 22400, subdivision (a).

Thayer also testified appellant made a complete stop, "impeding northbound traffic." When asked what traffic appellant was impeding, Thayer replied, "He was impeding my flow of traffic to continue northbound." Thayer testified he was planning on continuing northbound if appellant "did not stop right in front of me to block my northbound route of travel." During argument on the suppression motion, appellant's counsel conceded the police car was behind appellant and the police car was "traffic." The trial court found that "[w]hen [appellant] stopped his car, there was at least one car behind him."

The trial court found that there was "traffic in the area" other than the Lexus and police vehicle. West Boulevard is a public, city street and the incident occurred at 8:40 p.m. It was reasonable to suspect that one or more vehicles would approach from behind. Nothing obligated Thayer to wait for another vehicle to come up to his rear bumper before detaining appellant to investigate whether he was violating Vehicle Code section 22400, subdivision (a).

The trial court found that appellant did not signal his intentions by activating a turn signal where he stopped. The court referred to Vehicle Code section 22109, which prohibits a driver from stopping "without first giving an appropriate signal in the manner provided in this chapter to the driver of any vehicle immediately to the rear when there is opportunity to give the signal." Appellant failed to comply with this requirement.

The trial court found it was unclear whether appellant planned to back into the available parking space and unclear whether back-up lights were visible on the Lexus. Appellant contends this finding is inconsistent with the video, but it is not. As the trial court noted, the lights and reflections make it unclear whether the Lexus's back-up lights were activated. One thing on the video is very clear: it is impossible to determine what appellant intended to do when he stopped his Lexus in the sole northbound traffic lane on West Boulevard. Appellant may have mentioned something about parking when Thayer talked with him at the driver's window, but that was *after* appellant had been detained. The focus of analysis is on “ ‘the facts and circumstances *then known* to [the officer].’ ” (*Sanders, supra*, 31 Cal.4th at p. 334, italics added.)

The evidence supports the trial court's factual findings, and we conclude Thayer lawfully detained appellant to investigate whether he was violating Vehicle Code section 22400, subdivision (a). None of appellant's arguments compel a contrary conclusion.

Citing *People v. Reyes* (2011) 196 Cal.App.4th 856, appellant argues a “pure mistake of law cannot provide objectively reasonable suspicion to support a traffic stop.” In *Reyes*, an officer stopped a vehicle that had a single out-of-state license plate (which is lawful), instead of two license plates (which is required for California vehicles). *Reyes* indicated that stopping a vehicle with the belief that a single out-of-state plate violated the law was a mistake of law that made the stop unlawful. (*Id.* at pp. 858-860.) There is no mistake of law here. The issue is whether Thayer lawfully detained appellant to

investigate whether he violated Vehicle Code section 22400, subdivision (a), and we have concluded that he did.

Appellant argues that he did not violate Vehicle Code section 22400, subdivision (a), for a number of reasons: there was no movement of traffic because Thayer chose to follow appellant, appellant was parking legally on the street, and appellant was in the process of parking his car when he was stopped by Thayer. These arguments all miss the mark, because “the question is not whether appellant *actually* violated the Vehicle Code, but whether there was some ‘ “objective manifestation” that [he] *may* have’ violated the Vehicle Code.” (*People v. Durant* (2012) 205 Cal.App.4th 57, 63 [quoting *People v. Logsdon* (2008) 164 Cal.App.4th 741, 746].)

As we have discussed, there was an objective manifestation that appellant may have violated Vehicle Code section 22400, subdivision (a). Thayer testified, and the trial court properly found, that appellant brought his vehicle to a complete stop so as to impede the normal and reasonable movement of traffic on West Boulevard, without activating his turn signal or otherwise signaling his intentions to other vehicles. Under these circumstances, the traffic stop was justified. Thayer’s search of the vehicle was proper, because he “had probable cause to search [appellant’s] car for marijuana after he smelled the odor of marijuana.” (*People v. Strasburg* (2007) 148 Cal.App.4th 1052, 1059.) The trial court properly denied appellant’s motion to suppress.

DISPOSITION

The judgment is affirmed.

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JOHNSON, (MICHAEL) J.*

We concur:

EDMON, P. J.

LAVIN, J.

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