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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

RODERICK WASHINGTON,

Defendant and Appellant.

B283894

(Los Angeles County  
Super. Ct. No. GA095975)

APPEAL from a judgment of the Superior Court of Los Angeles County. Dorothy L. Shubin, Judge. Affirmed.

David M. Thompson, 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, Assistant Attorney General, Scott A. Taryle and Christopher G. Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant and appellant Roderick Washington appeals from his conviction, by no contest plea, of grand theft. The sole issue he raises on appeal is whether the trial court erred in denying his motion to suppress evidence obtained in a vehicle search (Pen. Code, § 1538.5).<sup>1</sup> We conclude the court properly denied defendant's motion to suppress, and therefore affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### *1. The Offense*

Kenneth M. was the victim of identity theft. Multiple accounts had been opened in his name, including one at Macy's. On January 25, 2015, defendant entered the Macy's store in West Covina, represented himself to be Kenneth, and, using a driver's license in Kenneth's name and Kenneth's social security number, bought several pieces of jewelry charged to Kenneth's account. On February 7, 2015, defendant exchanged some of that jewelry at a Burbank Macy's, obtaining two Movado watches and a necklace, of total value exceeding \$2,500. On February 12, 2015, defendant was the passenger in a car driven by Scott Cunningham. During a stop for a traffic violation, defendant consented to a search of the car. The watches and necklaces were recovered in a backpack in the trunk. Defendant admitted the backpack was his. Two of the items still had Macy's labels on them, which enabled Macy's investigators to track them back to the initial fraudulent purchases on Kenneth's account.

#### *2. The Charges*

Defendant was charged by information with burglary of Macy's (§ 459), identity theft from Kenneth (§ 530.5) and grand theft from Kenneth (§ 487, subd. (a)). Defendant made no motion

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<sup>1</sup> All undesignated references are to the Penal Code.

to suppress at the preliminary hearing; as a result, evidence regarding the search was limited.

### 3. *The Suppression Motion*

Subsequent to the preliminary hearing, defendant filed a motion to suppress. He conceded that the initial stop was constitutional, but argued that the police investigation had impermissibly expanded the scope of the stop. A hearing was held on the motion.

At the hearing, Glendale Police Officer Frank Segura testified to the circumstances of the search. Shortly after 8:00 p.m., he had been on patrol, when he noticed a white Hyundai parked illegally near a mini-mart. Specifically, the car was parked up against a red curb and was partially blocking a disabled parking spot. Officer Segura pulled his police vehicle up behind the Hyundai. He saw two men in the front of the car: Cunningham was in the driver's seat and defendant in the passenger seat. The car's headlights were on, the motor was running, and, as Officer Segura approached the driver, he saw that Cunningham was seat belted in. Officer Segura also saw two high-end women's purses in the back seat of the car.

Officer Segura asked Cunningham why he was parked against the red curb and in the disabled spot. Cunningham responded that he was not driving the car; defendant was. Given the fact that the motor was running and Cunningham was belted in the driver's seat, this appeared to be an obvious lie.

Officer Segura asked both men for identification. Defendant provided his identification and said that he had rented the car; Cunningham said he did not have identification to give. When asked why, Cunningham responded that his identification was in the process of being mailed to him. Cunningham instead

gave Officer Segura his name and date of birth. Without leaving the side of the car, Officer Segura called that information in over his radio. He received a response that Cunningham's license was suspended.

At some point during his conversation with Cunningham, Officer Segura told Cunningham to be honest with him. Cunningham then admitted that he had driven there. He explained that he had attempted to return the purses to the store across the street for a gift card, but the store would not accept the return because he had no receipt.

It is standard police procedure that when a lone officer stops a car, another officer comes to assist. In this case, Glendale Police Officer Murphy arrived to help Officer Segura. Once Officer Murphy arrived, they asked Cunningham to step out of the car and sit on the curb. Cunningham complied and was handcuffed. The officers also asked defendant to exit the car; he was not handcuffed. Defendant complied and sat on the curb.

At the hearing, Officer Segura explained that he removed Cunningham from the car for a variety of reasons:

(1) Cunningham admitted that he was driving and was aware his license was suspended; and (2) he had high-end purses he had claimed he was attempting to return or exchange at the store.

Other officers arrived to assist. When Cunningham and defendant were seated on the curb, a third officer went to the store across the street to investigate Cunningham's claim about the purses. His entire journey took approximately six minutes. The results of his investigation are not part of the record on appeal. However, while he was away, police searched the car.<sup>2</sup>

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<sup>2</sup> On appeal, defendant takes the position that the search did not occur until after the officer had returned from the store. But

Officer Segura testified that he had asked defendant for consent to search, which defendant gave. Defendant testified he never gave consent to search. When police searched the trunk, they found defendant's backpack containing the stolen jewelry.

The parties argued the suppression motion. Defendant did not question the legitimacy of the initial stop, but argued that it became improper when the police turned their attention to investigating the purses. Defendant argued that the presence of the two purses did not provide reasonable suspicion to continue the investigation, because there was no reason to think two men could not have had purses they had purchased for themselves or their significant others. Defendant further argued that, given the dispute in the testimony, the prosecution had not established that defendant had consented to the search of the car.

The trial court denied the motion, explaining its reasoning as follows. First, as defendant conceded, the stop was proper and the police were permitted to investigate whether Cunningham was a licensed driver. Second, Officer Segura spotted the purses in plain view. While it was certainly possible for men to own purses, the combination of factors – including that Cunningham was driving when his license was suspended, Cunningham had initially lied about driving, and Cunningham claimed that he had been attempting to exchange the purses at the store across the street – gave Officer Segura reasonable grounds to investigate further. Third, the continued detention while the third officer went to the store to further investigate was reasonable. Fourth,

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defendant had testified that it had taken the officer more than six minutes to complete his investigation at the store, explaining, “It was longer than six minutes because we was on the curb for a while and the other officer's tearing up the car.”

the court found Officer Segura's testimony that defendant consented to the search to be credible, and concluded that consent was given.

4. *The Plea, Conviction, Sentencing and Appeal*

Defendant then entered a plea of no contest to the count of grand theft. The trial court found him guilty and sentenced him to 16 months in jail. On the prosecution's motion, the court dismissed the remaining two counts. Defendant filed a timely notice of appeal.

### DISCUSSION

"In ruling on a motion to suppress, the trial court must find the historical facts, select the rule of law, and apply it to the facts in order to determine whether the law as applied has been violated. [Citation.] We review the court's resolution of the factual inquiry under the deferential substantial evidence standard. The ruling on whether the applicable law applies to the facts is a mixed question of law and fact that is subject to independent review. [Citation.]" (*People v. Ramos* (2004) 34 Cal.4th 494, 505.)

An officer may stop and detain a motorist on reasonable suspicion that the driver has violated the law. (*People v. Vibanco* (2007) 151 Cal.App.4th 1, 8.) A detention is to be distinguished from an arrest. The constitutional standard for a permissible detention is of lesser degree than that applicable to an arrest. (*People v. Soun* (1995) 34 Cal.App.4th 1499, 1515 (*Soun*).) "In order to justify a detention "the circumstances known or apparent to the officer must include specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity. Not only

must he subjectively entertain such a suspicion, but it must be objectively reasonable for him to do so: the facts must be such as would cause any reasonable police officer in a like position, drawing when appropriate on his training and experience [citation], to suspect the same criminal activity and same involvement by the person in question.” ’ [Citations.] Where, however, an investigative stop or detention is ‘predicated on circumstances which, when viewed objectively, support a mere curiosity, rumor, or hunch,’ the stop is unlawful even though the officer may have been acting in good faith. [Citation.]” (*People v. Ramirez* (1996) 41 Cal.App.4th 1608, 1613.)

Detentions are seizures of strictly limited duration, scope, and purpose. “Patently the permissible purpose of a detention is to investigate the suspicion of criminal activity on which the detention was predicated: ‘[T]o permit a speedy, focused investigation to confirm or dispel individualized suspicion of criminal activity.’ [Citation.]” (*Soun, supra*, 34 Cal.App.4th at p. 1516.)

An investigative detention must last no longer than is necessary to effectuate the purpose of the stop. (*Soun, supra*, 34 Cal.App.4th p. 1516.) There is no outside time limit on detentions. (*Id.* at p. 1517.) “ ‘Instead, the issue is decided on the facts of each case, with focus on whether the police diligently pursued a means of investigation reasonably designed to dispel or confirm their suspicions quickly, using the least intrusive means reasonably available under the circumstances. [Citations.]’ [Citations.]” (*Ibid.*)

During a traffic stop, an 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* (2009) 555 U.S. 323, 333.)

An officer's observations during the course of a temporary detention for a traffic violation may justify a further detention or arrest. (*Ingle v. Superior Court* (1982) 129 Cal.App.3d 188, 193.) However, if the investigation of the reasonable suspicion which justified the initial detention has been completed, the officer must meet the same reasonable suspicion standard to justify what is, in effect, a second investigative detention. (See *People v. McGaughran* (1979) 25 Cal.3d 577, 587; *Williams v. Superior Court* (1985) 168 Cal.App.3d 349, 357.)

Here, defendant does not question the propriety of the initial detention, as the car was indisputably parked illegally. Nor does he assert impropriety in Officer Segura asking both him and Cunningham for identification and removing them from the car. (See *People v. Vibanco, supra*, 151 Cal.App.4th at pp. 11, 13 [pursuant to a lawful traffic stop, officers may order a passenger to step out of the car for officer safety reasons and ask the passenger for identification].)

Defendant argues that the detention became impermissible when, while he and Cunningham were on the curb, they were further detained so that an officer could go to the store and follow up on Cunningham's story regarding the purses. At this point, it is apparent that the officers' inquiry had moved on from the reasons for the initial detention into an investigation of the purses. The trial court determined the police had a reasonable suspicion that there was some criminal activity afoot regarding the purses which justified the limited detention while an officer quickly investigated at the nearby store. We agree.



The issue is whether the circumstances known or apparent to Officer Segura included specific and articulable facts causing him to reasonably suspect defendant and Cunningham were involved in some criminal activity involving the purses. By the time of the detention, Officer Segura knew the following:

(1) Cunningham had lied to him about driving the car; (2) Cunningham had lied to him about his identification being in the mail; (3) Cunningham had, in fact, been illegally driving on a suspended license; (4) there were high-end ladies' purses in the back seat of the car; (5) Cunningham and defendant did not represent that the purses were for their personal use or gifts for women in their lives; and (6) instead, Cunningham claimed they had attempted to exchange the purses at a nearby store for gift cards, but could not do so, as they had no receipt. Taken together, the circumstances gave rise to a reasonable inference that the men had obtained the purses illegally, were attempting to perpetrate a fraud on the store, or both.

Thus, the further detention to diligently investigate the purses was justified. As substantial evidence supports the trial court's conclusion that defendant's consent to search was obtained during that detention, the search was not illegal and the motion to suppress was properly denied.

On appeal, defendant argues that there was no reasonable suspicion supporting a detention to investigate the purses. He argues that there can be no negative inference from Cunningham's lies about driving, as "Cunningham's initial denial of being the driver was reasonable since he knew his license was expired and [he] should not be driving." As to the presence of the purses, he argues that fact alone did not provide reasonable suspicion as the purses could have been purchased by the men in

the car for themselves or women they knew. There are three flaws in this argument. First, that an innocent explanation may exist for the purse possession and a less than innocent explanation may exist for Cunningham's lies to police does not mean that an inference of suspicious activity is not reasonable. An officer need only possess a reasonable suspicion to detain, he need not disprove all possible innocent explanations. Second, defendant is considering each fact individually when, under the standard, the totality of the circumstances is what matters. Third, defendant mischaracterizes the evidence relating to the purses. Reasonable suspicion was not based merely on the men's possession of women's purses, but also on Cunningham's claim that they had unsuccessfully attempted to exchange the purses for which they had no receipts.

Finally, on appeal, defendant argues that this was, in fact, a case of racial profiling. He suggests that "the only reason why Segura was suspicious was because Cunningham and appellant were black. If the vehicle had been a BMW or Mercedes and the people in the car [were] white, the presence of the purses would have aroused no suspicion whatsoever. The unlicensed driver would have been cited/arrested and the passenger told to take charge of the vehicle." Defendant raises this argument for the first time on appeal, and it is unsupported by any reference to the record. In fact, while the probation report confirms that defendant is black, there is nothing in the record, other than defendant's unsupported assertion in his written motion to suppress, that Cunningham is as well. Defendant's racial profiling argument is mere speculation unsupported by the record, and we reject it.

**DISPOSITION**

The judgment is affirmed.

RUBIN, ACTING P. J.

WE CONCUR:

GRIMES, J.

HALL, J.\*

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