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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

THE PEOPLE, Plaintiff and Respondent, v. ANTHONY JONATHAN NILA, Defendant and Appellant.	B283191 (Los Angeles County Super. Ct. No. KA114455)

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

Patricia S. Lai, 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, Colleen M. Tiedemann and Viet H. Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Anthony Jonathan Nila challenges a judgment of conviction entered following a plea of nolo contendere, contending the trial court erred in denying his motion to suppress evidence. We reject his contentions and affirm the judgment.

RELEVANT PROCEDURAL BACKGROUND

On January 28, 2017, appellant was arrested when Pomona Police Department (PPD) officers conducted a traffic stop of a vehicle driven by appellant, and discovered that it had been stolen.

On March 1, 2017, an information was filed, charging appellant with driving or taking a vehicle without consent (Veh. Code, § 1085, subd. (a)).[1] Accompanying the charge were allegations that he had suffered a prior conviction constituting a "strike," for purposes of the Three Strikes law (Pen. Code, §§ 667, subds. (b)-(j), 1170.12, subds. (a)-(d)). Appellant pleaded not guilty and denied the special allegation.

After the trial court denied appellant's motion to suppress evidence (Pen. Code, § 1538.5), appellant entered a plea of nolo contendere to the charge against him and admitted the special allegation. The trial court sentenced appellant to a term of four years in prison.

DISCUSSION

Appellant contends the trial court incorrectly declined to suppress the evidence discovered following the traffic stop. The crux of his contention is that the officers lacked a reasonable basis for conducting the stop, which they purportedly undertook in order to investigate a potentially unlawful turn under Vehicle Code section 22107. As explained below, we discern no error in the trial court's ruling.

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[1] All further statutory citations are to the Vehicle Code.

A. *Governing Principles*

Under Penal Code section 1538.5, subdivision (a), a defendant may move to suppress evidence gathered in violation of the state or federal Constitution. The California Constitution bars the exclusion of evidence obtained as a result of an unreasonable search or seizure unless this remedy is required by the federal Constitution. (Cal. Const., art. I, § 28, subd. (d); *People v. Camacho* (2000) 23 Cal.4th 824, 830.) "The Fourth Amendment of the United States Constitution prohibits unreasonable searches and seizures by police officers and other government officials. [Citation.] This constitutional proscription is enforced by an exclusionary rule, generally prohibiting admission at trial of evidence obtained in violation of the Fourth Amendment. [Citations.]" (*In re Tyrell J.* (1994) 8 Cal.4th 68, 75, overruled on another ground in *In re Jaime P.* (2006) 40 Cal.4th 128, 139.)

When reviewing a ruling on an unsuccessful motion to exclude evidence, we defer to the trial court's express and implied factual findings, upholding them if they are supported by substantial evidence, but we then independently review the court's determination that the search did not violate the Fourth Amendment. (*People v. Lomax* (2010) 49 Cal.4th 530, 563 (*Lomax*).) In evaluating the legality of the search, we examine "the correctness or incorrectness of the trial court's ruling, not the reasons for its ruling. [Citations.]" (*People v. Dimitrov* (1995) 33 Cal.App.4th 18, 27.)

Because traffic stops constitute "investigatory detentions," the key issues concern whether appellant was lawfully detained. (*People v. Durant* (2012) 205 Cal.App.4th 57, 63 (*Durant*).) Generally, a police officer may detain a person in order to investigate possible criminal behavior. (*Terry v. Ohio* (1968) 392

U.S. 1, 27.) The officer's conduct is assessed under an objective standard. (*Id.* at p. 21.) "[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." (*Ibid.*)

Under these principles, officers conducting the investigation of a traffic violation are held to specific objective standards. (*People v. Suff* (2014) 58 Cal.4th 1013, 1053-1054; *People v. Miranda* (1993) 17 Cal.App.4th 917, 926-927 (*Miranda*).) "[A] police officer can legally stop a motorist *only* if the facts and circumstances known to the officer support at least a reasonable suspicion that the driver has violated the Vehicle Code or some other law. [Citations.] . . . [¶] . . . [¶] . . . [A]n officer may order the driver out of the car [citation], ask for and examine the motorist's driver's license and the car registration, discuss the violation and listen to any explanation, write a citation, and obtain the driver's promise to appear. [Citation.]" (*Miranda*, *supra*, at pp. 926-927.) During the stop, the officer may properly observe what is in plain view, as that is not an invasion of privacy. (*Id.* at p. 927.)

B. *Vehicle Code Section 22107*

The focus of our inquiry is on whether the officers had a reasonable basis to suspect that appellant had violated section 22107. That statute provides: "No person shall turn a vehicle from a direct course or move right or left upon a roadway until such movement can be made with reasonable safety and then only after the giving of an appropriate signal in the manner provided in this chapter in the event any other vehicle may be affected by the movement." A central function of the statute is to prevent possible dangers to vehicles to the rear of the signaling

car, including police vehicles. (*Miranda*, *supra*, 17 Cal.App.4th at p. 930.)

Under section 22107, the obligation to signal has a broad scope. The obligation "is not limited to true left or right turns. . . . [B]y its express terms, the statute applies to *any movement* to the left or right from a direct course, and this is generally understood to include moving from one's lane. [Citations.]" (*People v. Thompson* (2000) 79 Cal.App.4th 40, 61.) Furthermore, because the statute mandates a signal "in the event any other vehicle *may* be affected by the movement" (§ 22107, italics added), the "potential effect" of a movement triggers the obligation to signal. (*People v. Logsdon* (2008) 164 Cal.App.4th 741, 745 (*Logsdon*).) For that reason, the fact that an unsignaled movement did not actually cause another car to swerve or brake does not, by itself, establish that a signal was unnecessary. (*Id.* at pp. 745-746.)

The required signal is partially specified in section 22108. (*People v. Carmona* (2011) 195 Cal.App.4th 1385, 1392-1393 (*Carmona*).) That statute provides: "Any signal of intention to turn right or left shall be given continuously during the last 100 feet traveled by the vehicle before turning." (§ 22108.) Viewed in conjunction with section 22108, section 22107 requires that a motorist "continuously signal during the last 100 feet traveled before turning, but only in the event other motorists may be affected." (*Carmona*, *supra*, at p. 1394.)

An actual violation of that duty is not required for a lawful traffic stop. "When assessing the reasonableness of a traffic stop, 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." (*Durant*, *supra*, 205 Cal.App.4th at p. 63, quoting *Logsdon*, *supra*,

164 Cal.App.4th at p. 746.) Thus, a lawful traffic stop requires only a reasonable suspicion that the duty had been violated, which need not amount to the "probable cause" necessary for an arrest. (*Ibid.*)

An instructive application of these principles is found in *Logsdon*. There, a police officer in a patrol car saw the defendant's vehicle leave a gas station, cross several lanes of a multi-lane street, and proceed forward in the middle lane. (*Logsdon*, *supra*, 164 Cal.App.4th at pp. 743-744.) The officer followed the defendant in the same lane, within 100 feet. (*Id.* at p. 743.) When the defendant moved from the middle lane to the far right lane without signaling, the officer conducted a traffic stop pursuant to section 22107, and discovered that the defendant was driving under the influence of alcohol. (*Ibid.*) The trial court denied the defendant's motion to suppress that evidence, concluding that there had been a car -- namely, the police vehicle -- "within 100 feet of [the defendant's] car, traveling in the same lane and at the same speed, . . . affected by the lane change." (*Id.* at p. 745.)

Affirming, the appellate court concluded that the unsignaled lane change could have affected the sole driver behind the defendant -- the police officer -- because it suggested inattention, sudden illness, or sleepiness, thereby creating uncertainty regarding the defendant's driving, including whether he might make "a very sudden overcorrection." (*Logsdon*, *supra*, 164 Cal.App.4th at p. 746.) The court explained that "[t]he purpose of the signaling requirement is to inform other drivers what the initial driver intends and thus, provide them with an indication as to his or her future course. Without such an indication, a driver is bereft of necessary information by which preparations can be made to drive safely." (*Ibid.*, italics omitted.)

The court further noted that the lawfulness of the traffic stop required only an objective manifestation that section 22107 might have been violated, not an actual violation of that statute. (*Id*. at pp. 745-746.)

C. *Underlying Proceedings*

Appellant's section 1538.5 motion sought to suppress all evidence discovered following the traffic stop, which he contended was unlawful. The sole witness called at the evidentiary hearing on the motion was PPD Officer Francesco Sacca.

According to Officer Sacca, on January 28, 2017, he and his partner were driving in a residential area of Pomona. They were in a black unmarked "tack" car, which had a front red light and push bar, as well as sirens and spotlights. At approximately 11:42 p.m., they were on 7th Street near Rebecca Street. As they were about to turn south onto Rebecca Street, a Honda Civic drove past them on Rebecca, moving south. After the officers turned onto Rebecca behind the Civic, it "immediately" pulled over to the right curb without signaling. The officers regarded that as an unsafe turn under section 22107, pulled in behind the Civic, and activated their lights in order to conduct a traffic stop.

Officer Sacca further testified that when he walked to the Civic, appellant -- who was the Civic's sole occupant -- remained inside it. Upon looking inside the Civic, Sacca noticed that although the Civic's engine was running, there was no key in the ignition switch. Sacca inferred that the Civic might have been stolen, and a check through the officers' dispatch system confirmed his suspicion.

On cross-examination, Officer Sacca was presented with eight photographs of different portions of the west curb side of Rebecca Street between 7th and 8th Street. Although Sacca appears to have pointed to one photograph as showing the area of

the traffic stop, the record does not establish which photograph he identified. The record discloses only the following testimony:

> "Q. So when [appellant] was driving down Rebecca, do you recall along what portion of the road you pulled him over?
>
> "A. It was just south of 7th Street, somewhere along this west curb line (indicating). I'm not 100 percent sure how far down or anything.

Following the presentation of evidence, defense counsel contended it was likely that there was a "substantial gap of space" between the two cars when appellant moved his car to the curb. He argued that if appellant had been travelling at 20 to 25 miles per hour as he passed in front of the police car on 7th Street, and five seconds elapsed before the officers made the turn onto Rebecca Street, the distance between the two cars would have exceeded 100 feet.

The prosecutor acknowledged that Officer Sacca had not specified the distance between the cars, but argued that his testimony indicated that the police car was "immediately behind" appellant's car when it moved to the curb. The prosecutor also noted that under defense counsel's calculations, the distance between the two cars would have been approximately 80 feet if three seconds elapsed before the officers made the turn onto Rebecca Street.

Relying on *Logsdon*, the trial court concluded that the traffic stop was lawful, stating: "[W]hat we're talking about is a police officer in the field who has to make snap decisions, snap judgments. He sees what he believes to be a violation. . . . I'm finding, based on his testimony, he was within a hundred feet."

The court further concluded that there was no unreasonable search, as "everything [Officer Sacca] saw was in plain sight."

D. *Analysis*

Appellant contends there was insufficient evidence to establish a reasonable suspicion that section 22107 had been violated. As explained above (see pt. B., *ante*), in reviewing his challenges, our primary focus is on whether there is adequate evidence of an "'objective manifestation'" that he had violated that statute, not whether he actually did so. (*Logsdon*, *supra*, 164 Cal.App.4th at p. 746.)

Appellant's principal contention is that his unsignaled movement could not have affected the only other vehicle present -- the police car -- for purposes of a potential violation of section 22107. He argues that he was not making a turn or changing lanes, but was merely "moving within the lane to the curb." We are not persuaded.

According to Officer Sacca, near midnight on January 28, 2017, he and his partner turned onto Rebecca Street and drove behind appellant, who "immediately" made an unsignaled movement to the right curb. That movement -- which Sacca described as "unsafe" -- raised the same uncertainties regarding appellant's future driving as were presented in *Logsdon*. The lack of a signal suggested inattention, sudden illness, or sleepiness, raising the possibility of "a very sudden overcorrection" (*Logsdon*, *supra*, 164 Cal.App.4th at p. 746), that is, an abrupt and unsignaled movement away from the curb as the officers moved past appellant's car. There is thus sufficient evidence that appellant's failure to signal affected the officers' car, for purposes of justifying the traffic stop.

Appellant also contends there is insufficient evidence that Officer Sacca's car was within 100 feet of appellant's vehicle when

he made the unsignaled movement. He places special emphasis on defense counsel's argument that if five seconds elapsed before the officers made the turn onto Rebecca Street and followed appellant's car, the distance between the cars exceeded 100 feet. As explained below, we reject his contentions.

In reviewing the trial court's conclusion that the traffic stop was lawful, we resolve all factual issues in support of the ruling, insofar as the court did not make express findings, provided there is adequate evidence for such implied findings. (*Lomax*, *supra*, 49 Cal.4th at p. 563.) That is because we review the court's findings, whether express or implied, ""'under the deferential substantial-evidence standard.'" [Citation.] Accordingly, '[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's ruling.' [Citation.]" (*People v. Tully* (2012) 54 Cal.4th 952, 979.)

Here, in addition to finding that the gap between the cars was actually less than 100 feet, the trial court impliedly found that Officer Sacca -- as a "police officer in the field who ha[d] to make snap decisions" -- reasonably judged the size of the gap to be such that appellant's movement was unsafe under section 22107. Of these findings, only the latter is essential to a determination that there was a "reasonable suspicion" that section 22107 had been violated, for purposes of establishing the lawfulness of the traffic stop. (*Durant*, *supra*, 205 Cal.App.4th at p. 63.)

We conclude that there is sufficient evidence to support each finding. Although Officer Sacca did not specify the distance between the cars, he stated that appellant moved to the curb "immediately" after the officers made the turn from 7th Street onto Rebecca Street, and that the traffic stop occurred "just south

of 7th Street." That testimony is sufficient to support the trial court's determination of the actual distance between the cars. Additionally, we note that Officer Sacca appears to have selected a particular photograph as depicting the area of the traffic stop. Because that photograph is not identified in the record, we must presume that it supported the trial court's finding. (*People v. Buttles* (1990) 223 Cal.App.3d 1631, 1639-1640 ["What the trier of fact observes is itself evidence . . . . When what the trier of fact observed has not been made a part of the transcript on appeal, a reviewing court must assume that the evidence acquired by such a viewing is sufficient to sustain the finding or judgment in question."].)

For similar reasons, there is sufficient evidence that Officer Sacca had a reasonable suspicion that his own vehicle was within 100 feet of appellant's car at the time of the movement. The incident occurred near midnight, when darkness ordinarily diminishes visibility. In view of those circumstances, Officer Sacca's testimony set forth a reasonable basis for judging the gap between the cars to be less than 100 feet, even if that estimate was incorrect.

Carmona, *supra*, 195 Cal.App.4th 1385 and *People v. Butler* (1988) 202 Cal.App.3d 602 (*Butler*), upon which appellant relies, are distinguishable. In *Carmona*, as a police officer drove down a street, he saw the defendant's vehicle approximately 40 yards away, driving toward him on the same street. (*Carmona*, *supra*, 195 Cal.App.4th at p. 1388.) When the vehicles were 55 feet apart, the defendant made an unsignaled right-hand turn onto an adjoining street. (*Ibid.*) Relying on section 22107, the officer conducted a traffic stop and found drugs in the defendant's vehicle. (*Ibid.*) At the hearing on the defendant's motion to suppress the evidence, the officer testified that the unsignaled

turn did not affect his car, and that the street was otherwise deserted. (*Id*. at pp. 1388, 1390.) The trial court nonetheless denied the motion to suppress, concluding that the defendant's failure to signal for 100 feet prior to the turn contravened section 22108, which it determined to be a distinct traffic violation. (*Id*. at p. 1388.)

Reversing, the appellate court held that section 22108 is not a "stand-alone directive," but merely specifies the duration of the signal required under section 22017 when another car may be affected by the impending movement. (*Carmona*, *supra*, 195 Cal.App.4th at p. 1394.) In view of the officer's testimony that the defendant's turn did not affect his vehicle, the appellate court concluded that he had no reasonable basis for investigating a potential violation of section 22107 or section 22108. (*Id*. at p. 1394.) Here, in contrast, Officer Sacca did not testify that his car was unaffected by appellant's unsignaled movement, and the record discloses sufficient evidence that Sacca's car could have been affected by that movement.

In *Butler*, a police officer on night patrol saw a car stop near a liquor store, then speed away. (*Butler*, *supra*, 202 Cal.App.3d at pp. 604-605.) The officer followed the car, saw that it had tinted windows, and conducted a traffic stop predicated on section 26708.5, which bars certain types of tinting on vehicle windows, with specified exceptions.[2] (*Ibid*.) During the traffic

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[2] Section 26708.5 states: "(a) No person shall place, install, affix, or apply any transparent material upon the windshield, or side or rear windows, of any motor vehicle if the material alters the color or reduces the light transmittance of the windshield or side or rear windows, except as provided in subdivision (b), (c), or (d) of [s]ection 26708. [¶] (b) Tinted safety glass may be installed in a vehicle if (1) the glass complies with motor vehicle safety

stop, the officer found drugs and unlawful drug paraphernalia in the car. (*Ibid.*) After the trial court denied the defendant's motion to suppress, the appellate court reversed, concluding that the mere presence of tinted windows did not support a reasonable suspicion that the statute had been violated, absent additional facts suggesting that no exception applied. (*Id.* at p. 607.) For the reasons discussed above, no such error is presented here, as Officer Sacca's testimony established a reasonable suspicion that appellant had violated section 22107. In sum, the trial court did not err in denying appellant's motion to suppress.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, P. J.

We concur:

COLLINS, J. MICON, J.*

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

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standards of the United States Department of Transportation for safety glazing materials, and (2) the glass is installed in a location permitted by those standards for the particular type of glass used."