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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

THE PEOPLE, Plaintiff and Respondent, v. LYDELL LAWRENCE, Defendant and Appellant.	B276480 (Los Angeles County Super. Ct. No. VA140280)

APPEAL from a judgment of the Superior Court of Los Angeles County, Roger Ito, Judge. Affirmed as modified.

Mark S. Devore, 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, Jonathan J. Kline and Amanda V. Lopez, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Lydell Lawrence appeals the judgment following his conviction and sentence for carrying a concealed and loaded handgun in his vehicle. He argues the trial court erred in denying his motion to suppress because the search of his vehicle exceeded the scope of his consent. We need not decide that issue because the search was independently justified by probable cause under the automobile exception. Appellant also requests that we review the sealed transcript of an in camera hearing on the discovery of officer personnel records pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). We have done so and conclude the trial court did not abuse its discretion in ordering only one item of information disclosed. We correct an error in the fines imposed for his sentence and affirm.

BACKGROUND

The following facts were presented at the hearing on appellant's motion to suppress: On August 10, 2015, two Los Angeles County sheriff's deputies were on patrol when they saw appellant speeding in an SUV, crossing over yellow lines, and causing other cars to move out of the way. Appellant parked and walked onto a driveway. The deputies parked behind his vehicle and detained him, intending to warn or cite him for traffic violations. But one of the deputies smelled marijuana and spotted a green, leafy substance that appeared to be marijuana in the center console of appellant's vehicle. That deputy asked appellant if he could search the vehicle, and appellant said yes. The deputy then searched the vehicle and found a gun when he "pulled out" the radio in his dash.[1]

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[1] Later at trial, the deputy explained that he noticed the radio was after-market and the molding around it was not flush with the dashboard. He said it was loose and easy to remove

Based on this record, the trial court rejected appellant's argument that the deputy exceeded the scope of consent to search the vehicle, finding "once there was consent to search, then the officer could search the vehicle. He could have looked under the floor mats, he could have looked in the back seat. This officer was probably more thorough than the defendant thought he would be since there was just marijuana there in plain sight."

Following trial, a jury convicted appellant of carrying a loaded handgun not registered to him in a vehicle (Pen. Code, § 25850, subd. (a))[2] and carrying a concealed weapon within a vehicle (§ 25400, subd. (a)(1)). He was sentenced to three years in state prison, with two years to be served in county jail followed by one year of mandatory supervision.

DISCUSSION

1. Motion to Suppress

When ruling on a motion to suppress pursuant to section 1538.5, " ' "the trial court (1) finds the historical facts, (2) selects the applicable rule of law, and (3) applies the latter to the former to determine whether the rule of law as applied to the established facts is or is not violated." ' " (*People v. Ayala* (2000) 23 Cal.4th 225, 255.) We review the first inquiry for substantial evidence and the second and third inquiries independently. (*Ibid.*)

In the trial court and on appeal, appellant argues the search of his car exceeded the scope of his consent. Respondent

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without using any tools. In his experience, "[p]eople usually remove the radio and hide either drugs, paraphernalia, sometimes firearms in those areas, along with other compartments within the full dash."

[2] All undesignated statutory citations are to the Penal Code unless noted otherwise.

argues the search fell within appellant's consent, and alternatively, the search was justified by probable cause under the automobile exception. The prosecution did not raise the latter ground in the trial court. Normally the prosecution cannot justify a search on appeal based on a theory not raised in the trial court. (*People v. Watkins* (1994) 26 Cal.App.4th 19, 30.) But that rule does not apply " 'where there does not appear to be any further evidence that could have been introduced to defeat the theory in the trial court and therefore the question of application of the new ground to a given set of facts is a question of law.' " (*Id.* at p. 31; see *Green v. Superior Court* (1985) 40 Cal.3d 126, 138-139.)

That is the case here. The deputy testified he smelled and saw what he believed to be marijuana in appellant's car, which prompted him to ask appellant if he could search the car. In his briefs, appellant has pointed to no evidence he could have developed in the trial court that would contradict the deputy's testimony, which furnished probable cause for the search independent of appellant's consent, as we will explain. In oral argument, appellant's counsel said he would have asked the officer how he knew the substance he saw and smelled was marijuana. We are not persuaded the officer would have provided any testimony to defeat probable cause. Thus, we may address this ground as an alternative rationale to validate the search. (See *People v. Gorak* (1987) 196 Cal.App.3d 1032, 1039 [raising probable cause for automobile search for first time on appeal].)

The Fourth Amendment " 'permits the warrantless search of an automobile with probable cause.' [Citation.] Under the automobile exception to the warrant requirement, '[w]hen the

police have probable cause to believe an automobile contains contraband or evidence they may search the automobile and the containers within it without a warrant.' " (*People v. Waxler* (2014) 224 Cal.App.4th 712, 718 (*Waxler*).) Under this exception, " ' " '[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.' " ' " (*Id.* at p. 719.)

With regard to marijuana specifically, "California courts have concluded the odor of unburned marijuana or the observation of fresh marijuana may furnish probable cause to search a vehicle under the automobile exception to the warrant requirement." (*Waxler, supra,* 224 Cal.App.4th at p. 719.) "Armed with the knowledge that there was marijuana in the car, 'a person of ordinary caution would conscientiously entertain a strong suspicion that even if defendant makes only personal use of the marijuana found in [the passenger area], he might stash additional quantities for future use in other parts of the vehicle, including the trunk.' " (*People v. Strasberg* (2007) 148 Cal.App.4th 1052, 1060 (*Strasberg*).)

Under *Waxler* and *Strasberg*, the search of appellant's vehicle was supported by probable cause. When the deputy who searched the vehicle smelled marijuana and spotted a green, leafy substance that appeared to be marijuana in the center console of the vehicle, he was entitled to search the entire vehicle for narcotics, including " ' " 'every part of the vehicle and its contents that may conceal the object of the search.' " ' " (*Waxler, supra,* 224 Cal.App.4th at p. 719.) That included removing the radio to check the space behind it. (See *United States v. Ross* (1982) 456 U.S. 798, 817-818 [approving of case in which agents

tore open upholstery of stopped vehicle to look for concealed contraband]; *United States v. Strickland* (11th Cir. 1990) 902 F.2d 937, 942 [approving mutilation of spare tire because probable cause search "may include some injury to the vehicle or the items within the vehicle, if the damage is reasonably necessary to gain access to a specific location where the officers have probable cause to believe that the object of their search is located"].) Thus, appellant's motion to suppress was properly denied.

2. *Pitchess* Review

Prior to trial, appellant moved pursuant to *Pitchess, supra*, 11 Cal.3d 531, for discovery of evidence related to the honesty and moral turpitude of the officers involved in his arrest and search. The trial court granted the motion and held an in camera hearing, during which the court described the items in the officers' personnel records and heard testimony from the custodian of records. The court ordered disclosure of one item of discoverable information and concluded the rest of the information need not be disclosed.

Appellant requests we independently review the in camera *Pitchess* proceedings to determine if the trial court properly ordered disclosure of all materials to which he would be entitled. Respondent does not object to our review. We have reviewed the proceedings and conclude the trial court properly evaluated the materials and reasonably exercised its discretion in ordering disclosure of only one item of evidence. (*People v. Myles* (2012) 53 Cal.4th 1181, 1209; *People v. Mooc* (2001) 26 Cal.4th 1216, 1228.)

3. Correction of Fines

Appellant was convicted of two separate counts. The trial court orally imposed a $40 court security fee (§ 1465.8) and a $30

court facilities assessment (Govt. Code, § 70373), which is reflected in the abstract of judgment. That was incorrect. The court should have imposed those amounts *per count*, for a total of $80 and $60 respectively. (*People v. Sencion* (2012) 211 Cal.App.4th 480, 484.) We will order the abstracts of judgment corrected accordingly.

DISPOSITION

We modify the judgment to impose a $80 court operations assessment and a $60 criminal conviction assessment. The trial court is directed to forward a corrected abstract of judgment to the Department of Corrections and Rehabilitation.

We affirm the judgment as modified.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.