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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. AMOS HASON, Defendant and Appellant.	B275903 (Los Angeles County Super. Ct. No. LA082389)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael V. Jesic, Judge. Affirmed.

A. William Bartz, Jr. 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, Steven D. Matthews and J. Michael Lehmann, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Amos Hason challenges his convictions for carrying a loaded firearm with a prior conviction (Pen. Code, § 25850, subd. (a)) and possession of a zip gun (Pen. Code, § 33600), contending they were based on evidence from an illegal search.[1] We reject his challenge and affirm the judgment.

RELEVANT PROCEDURAL BACKGROUND

On May 3, 2014, appellant was arrested when Los Angeles Police Department (LAPD) officers on patrol investigated appellant's irregularly parked truck and found a loaded homemade firearm. In February 2016, at the preliminary hearing, the trial court denied appellant's motion to suppress evidence of the firearm discovered by the arresting officers (§ 1538.5, subd. (a)).[2] On February 25,

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

[2] The preliminary hearing was the second such hearing conducted following appellant's arrest. In August 2014, at appellant's first preliminary hearing, the trial court denied his motion to suppress evidence of the firearm, and found sufficient evidence to support charges of possession of a short-barrel shotgun (§ 33215), carrying a loaded firearm with a prior conviction (§ 25850, subd. (a)), and possession of a zip gun (§ 33600). According to the limited record before us, in January 2015, the trial court ordered a determination of appellant's mental competence (§ 1370). Later, in December 2015, the prosecution dismissed the first action against appellant and initiated the underlying action.

2016, an information was filed, charging appellant in count 1 with carrying a loaded firearm with a prior conviction, and in count 2 with possession of a zip gun.[3] Accompanying count 1 was an allegation that appellant had suffered a prior misdemeanor conviction for possession of a zip gun. Appellant pleaded not guilty.

In a bifurcated trial, a jury found appellant guilty as charged and found the special allegation to be true. The trial court imposed a sentence totaling two years in prison.

FACTS

A. *Prosecution Evidence*

LAPD Officer Robert Powers testified that on May 3, 2014, at approximately midnight, he and Officer Anibal Carrasco were in a patrol car near the corner of Bessemer and Sylmar. As the officers approached that corner, they saw a pickup truck parked in a red zone. When they stopped to investigate, appellant left the truck and asked what they were doing. After telling appellant that his truck was parked in a red zone, they obtained his identification. Carrasco determined that appellant had an outstanding misdemeanor warrant, and the officers arrested him.

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[3] Under section 17360, a zip gun is any weapon or device that was "made or altered to expel a projectile by the force of an explosion or other form of combustion," but was neither imported by a licensed importer nor designed to be a firearm by a licensed manufacturer, and has not been subject to taxation.

Powers further testified that after requesting appellant's consent to search the truck, Carrasco found a blue bag inside the truck and placed it on the patrol car's hood. As Powers reached into the bag, appellant said, "'Be careful. There's a firearm in the bag.'" Inside the bag Powers found what appeared to be a homemade gun. After appellant advised Powers that the gun was loaded, Powers saw a shotgun round inside the gun, and with appellant's verbal assistance, removed a nail that served as the firing pin.

Powers further testified that upon receiving *Miranda* warnings, appellant stated: "'I got shot in the stomach while sleeping on the streets years ago. I have a gun for protection. I found the gun, and I told you I had the weapon because I didn't want anyone to get hurt. I have the weapon because I have been a victim before.'"[4]

LAPD Detective James Edwards, a firearms expert, testified that the gun found in appellant's truck was an operable zip gun, that is, an improvised weapon not made by a firearm manufacturer that was capable of firing a shotgun round.[5]

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[4] *Miranda v. Arizona* (1966) 384 U.S. 436.

[5] After rendering guilty verdicts on the charges of carrying a loaded firearm and possession of a zip gun, the jury received additional evidence that appellant had a prior misdemeanor conviction for possession of a zip gun, and found that he had, in fact, suffered that conviction.

B. *Defense Evidence*

Appellant testified that he was sleeping inside his truck when Officers Powers and Carrasco parked their patrol car near the truck's door. Carrasco directed appellant to get out of the truck, and Powers asked him to provide identification. According to appellant, the officers handcuffed him without explaining why they approached him. Because appellant was handcuffed, Powers removed appellant's identification from his pocket, and returned to the patrol car. Carrasco then asked, "'You don't mind that I search your -- right?,'" to which appellant replied, "'Yeah, I do mind.'" Carrasco entered the truck, pulled out a blue bag, and said, "'Let's see what's in here.'" As Carrasco reached into the bag, appellant said, "'It's a firearm. And be careful because it's dangerous.'" Appellant told Carrasco that the firearm was loaded, and showed him how to render it safe. When the officers placed appellant in the patrol car, they stated that he had been arrested because his truck was parked by "the red line." Later, at the police station, appellant told the officers that in July 2012, he had been shot in the stomach.

At trial, appellant denied that the truck was parked in a red zone, and denied manufacturing the firearm in the blue bag. According to appellant, he found the bag containing the firearm in a trash bin. Appellant further stated that the firearm did not shoot when he tried it, and that he had intended to fix the firearm.

DISCUSSION

Appellant contends the trial court incorrectly declined to suppress evidence of the zip gun found in his truck. He argues that the police officers' request for identification and subsequent warrant check unreasonably prolonged his detention, and thus contravened the Fourth Amendment of the United States Constitution. As explained below, appellant has failed to show error in the ruling.

A. *Governing Principles*

Under 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.)

Because appellant asserted a motion to suppress under section 1538.5 at the preliminary hearing, his contention is

subject to the statutory procedure specified for such a motion. Under subdivision (f)(1) of the statute, a defendant charged with a felony may file a motion to suppress evidence relating to that charge at the preliminary hearing, although the motion is "restricted to evidence sought to be introduced by the people at the preliminary hearing." Under subdivision (i) of the statute, absent an agreement by the prosecution, the defendant is entitled to renew the motion prior to trial, but the evidence presented is "limited to the transcript of the preliminary hearing and to evidence that could not reasonably have been presented at the preliminary hearing, except that the people may recall witnesses who testified at the special hearing." (§ 1538.5, subd. (i).)

The procedure applicable to motions to suppress at the preliminary hearing imposes special restrictions on our review of appellant's contention. That procedure reflects the fact that the trial court at the preliminary hearing acts in a special role -- namely, that of magistrate -- distinct from the role played by the superior court after an information charging a felony is filed against a defendant. (*People v. Richardson* (2007) 156 Cal.App.4th 574, 584-585.) In *People v. Lilienthal* (1978) 22 Cal.3d 891, 895-897 (*Lilienthal*), our Supreme Court concluded that due to the distinction between those roles, when the magistrate denies a section 1538.5 motion, the defendant may contend on appeal that the relevant evidence should have been suppressed only if the defendant challenges the magistrate's ruling before the superior court by means of a renewed motion to suppress

under subdivision (i) of section 1538.5 or a motion to set aside the information under section 995.[6] In so holding, the Supreme Court explained that "it would be wholly inappropriate to reverse a superior court's judgment for error it did not commit and that was never called to its attention." (*Lilienthal*, *supra*, 22 Cal.3d at p. 896.) The so-called "*Lilienthal* rule" retains its vitality despite the unification of the municipal and superior courts, which abolished the traditional assignment of preliminary hearings to municipal courts. (*Richardson*, *supra*, 156 Cal.App.4th at pp. 586-589.)

Notwithstanding the distinction in roles underlying the *Lilienthal* rule, when the magistrate denies a section 1538.5 motion to suppress at the preliminary hearing, its factual findings are subject to special deference in subsequent proceedings before the superior court and on appeal. (*People v. Romeo* (2015) 240 Cal.App.4th 931, 941-942.) Those findings are binding on the superior court addressing a renewed motion to suppress under subdivision (i) of section 1538.5, unless new evidence is presented in connection with the renewed motion. (*Romeo*, *supra,* 240 Cal.App.4th at p. 941.) Furthermore, on appeal, the

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[6] Generally, section 995 permits the defendant to set aside an indictment or information on specified grounds, including that prior to the filing of the information, "the defendant [has] been committed without reasonable or probable cause" (§ 995, subd. (a)(2)(B)).

magistrate's factual findings regulate our standard of review. (*Id*. at p. 942.)

As explained in *Romeo*, when a renewed motion to dismiss relies solely on the preliminary hearing evidence, "the appellate court, like the superior court, is bound by the magistrate's factual findings so long as they are supported by substantial evidence. [Citations.] On review of the superior court ruling . . . , a two-step standard of review applies. In the first step of our review, 'we in effect disregard the ruling of the superior court and directly review the determination of the magistrate.' [Citation.] At this stage, we consider the record in the light most favorable to the People . . . . [¶] Accepting as established all implied or express factual findings by the magistrate as are supported by substantial evidence, we then proceed to measure those findings against Fourth Amendment standards articulated by the United States Supreme Court. [Citation.] At this stage, we independently apply the law to the factual findings [citations], determining de novo whether the factual record supports the magistrate's conclusion that the challenged search met the constitutional standard of reasonableness [citations]." (*Romeo*, *supra*, 240 Cal.App.4th at pp. 941-942.)

B. *Underlying Proceedings*

At the beginning of the preliminary hearing, Judge Martin L. Herscovitz permitted appellant, then proceeding in propria persona, to file a belated section 1538.5 motion.

The only witnesses called at the hearing were Officers Carrasco and Powers.

The officers testified that on May 3, 2014, shortly after midnight, they saw a pickup truck parked in a red zone with the driver door open. After the officers stopped their patrol car, Carrasco contacted appellant, who was the truck's sole occupant, and requested his identification. Upon receiving appellant's identification, Carrasco checked for warrants relating to appellant using the patrol car's computer. When Carrasco found an outstanding warrant for making criminal threats (§ 422), Powers handcuffed appellant, and Carrasco requested his consent to search the truck. With appellant's verbal consent, Carrasco looked inside the truck, found a blue backpack, and handed it to Powers. As Powers opened the backpack, appellant said, "'Be careful. There's a firearm in there.'" Inside the backpack Powers recovered a loaded zip gun, which he rendered safe with appellant's verbal assistance.

Judge Herscovitz denied appellant's section 1538.5 motion and determined that there was sufficient evidence to charge him with carrying a loaded firearm with a prior conviction and possession of a zip gun. Following the filing of the information, the action was assigned to Judge Michael V. Jesic. Appellant filed motions for a change of venue, to compel discovery, and for the disqualification of Judge Jesic.

On March 15, 2016, Judge Jesic conducted a hearing on those motions, which he denied. When appellant requested a hearing on a motion under section 1538.5, Judge

Jesic stated that he would deny any such motion because a section 1538.5 motion had been denied at the preliminary hearing. Appellant responded that he intended to assert a renewed motion pursuant to subdivision (i) of section 1538.5. Judge Jesic stated that he would hear any such motion at the next hearing, which occurred on April 15, 2016.

The record reflects no subsequent ruling on a motion under subdivision (i) of section 1538.5. In late March 2016, appellant filed two essentially identical motions designated as "nonstatutory motion[s] to dismiss" (accompanied by supporting documents), which contended that Judge Herscovitz had improperly denied appellant an opportunity to present evidence in support of his section 1538.5 motion at the preliminary hearing.[7] The minute order from the April 15, 2016 hearing states only that the trial court denied "a [section] 995 motion with supplemental documents."[8] In later hearings, appellant raised other issues related to the denial of his section 1538.5 motion at the preliminary

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[7] The motions asserted, inter alia, that Judge Herscovitz failed to allow appellant to introduce the officers' testimony from the first preliminary hearing for impeachment purposes.

[8] The record contains no reporter's transcript from the April 15, 2016 hearing.

hearing, but never expressly asserted a motion under subdivision (i) of section 1538.5.[9]

C. *Analysis*

For the reasons discussed below, we conclude that appellant has failed to establish error regarding the denial of his section 1538.5 motion.

1. *Forfeiture*

At the threshold of our inquiry, we examine respondent's contention that appellant forfeited his challenge to the denial of his section 1538.5 motion. The crux of that contention is that although appellant asserted a renewed motion under section 1538.5 motion, subdivision (i) before Judge Jesic, as required by the *Lilienthal* rule, appellant never pressed for a ruling on that motion, and instead directed Judge Jesic's attention to other motions. As

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[9] On May 6, 2016, appellant filed a "common law" motion to dismiss, contending that the prosecution failed to obtain a certificate of probable cause in a timely manner following appellant's arrest. At a hearing on that date, Judge Jesic denied the motion to dismiss, as well as appellant's request for discovery of the misdemeanor warrant that Officer Carrasco discovered while checking appellant's identification. In the course of the hearing, appellant told Judge Jesic that he had filed petitions for writ of prohibition in appellate courts challenging the rulings on the motion to disqualify Judge Jesic and the "section 995 motion." Those petitions were denied.

explained below, appellant has failed to preserve his challenge to the denial of his section 1538.5 motion.

Generally, "a party may not challenge on appeal a procedural error or omission if the party acquiesced by failing to object or protest under circumstances indicating that the error or omission probably was inadvertent." (*People v. Braxton* (2004) 34 Cal.4th 798, 813.) Thus, when the trial court inadvertently fails to rule on a motion asserted by a defendant, "the defendant must make some appropriate effort to obtain the . . . ruling. [Citations.] ""[W]here the court, through inadvertence or neglect, neither rules nor reserves its ruling . . . the party who objected must make some effort to have the court *actually rule*. If the point is not pressed and is forgotten, [the party] may be deemed to have waived or abandoned it, just as if he had failed to make the objection in the first place."" [Citations.]" (*Ibid*., quoting *People v. Obie* (1974) 41 Cal.App.3d 744, 750, disapproved on another ground in *People v. Rollo* (1977) 20 Cal.3d 109, 120, fn. 4.)

Nothing in the record suggests that appellant ever pressed for, or obtained, a ruling from Judge Jesic regarding Judge Herscovitz's denial of the section 1538.5 motion, either by a renewed motion under section 1538.5, subdivision (i), or a motion to dismiss under section 995. The record shows that at appellant's request, Judge Jesic set a hearing on appellant's renewed motion under section 1538.5, subdivision (i). Although the record lacks a reporter's transcript from that hearing, the minute order

reflects no ruling on the renewed motion, and discloses only Judge Jesic's ruling on a motion that did not seek a review of Judge Herscovitz's denial of the section 1538.5 motion. The record otherwise shows that at later hearings, appellant directed Judge Jesic's attention to other motions that also did not seek a review of Judge Herscovitz's ruling. Accordingly, appellant has failed to preserve his contention of error for appeal.

2. *No Error*

Even were we to examine Judge Herscovitz's ruling, we would find no error. As Officers Carrasco's and Powers's factual accounts of the pertinent events are not in dispute, the sole question before us is whether appellant's detention was unlawful under the Fourth Amendment. Appellant contends the officers, by asking for appellant's identification and conducting a warrant check, unduly prolonged his detention, in contravention of the Fourth Amendment.

In *People v. McGaughran* (1979) 25 Cal.3d 577, 582-584, our Supreme Court examined whether a police officer, in conducting a traffic stop, may prolong the stop beyond the time necessary to resolve the lawful grounds for the stop in order to complete a warrant check. (*Id.* at pp. 582-584.) There, a police officer stopped a vehicle moving the wrong way on a one-way street. (*Id.* at p. 581.) Under Vehicle Code section 40504, subdivision (a), in the case of such a traffic violation, the officer is required to release the offending driver "forthwith" with a ticket, provided the

driver provided adequate identification. (*People v. McGaughran, supra,* at p. 586.) Notwithstanding the statute, after the driver produced his driver's license, the officer detained the driver for as much as an additional 10 minutes in order to complete a warrant check, which disclosed an outstanding arrest warrant for burglary. (*Id*. at p. 586 & fn. 7.) The Supreme Court concluded that the driver's prolonged detention after offering his driver's license contravened the Fourth Amendment and former Vehicle Code section 40504, subdivision (b). (*People v. McGaughran, supra,* at pp. 586-587.)[10]

In 1982, the electorate enacted the "'Right to Truth-in-Evidence'" provision of the California Constitution (Cal. Const., art. I, § 28, subd. (f), par. (2)) by approving Proposition 8. (*People v. Lazlo* (2012) 206 Cal.App.4th 1063, 1069.) Due to the passage of Proposition 8, evidence may not be excluded merely because it was obtained in violation

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10 In so concluding, the Supreme Court stated: "[T]he law contemplates that the officer may temporarily detain the offender at the scene for the period of time necessary to discharge the duties that he incurs by virtue of the traffic stop. If a warrant check can be completed within that same period, no reason appears to hold it improper: because it would not add to the delay already lawfully experienced by the offender as a result of his violation, it would not represent any further intrusion on his rights." (*McGaughran*, *supra*, 25 Cal.3d at p. 584.)

of a state statute or state constitutional provision. (*People v. McKay* (2002) 27 Cal.4th 601, 608.) After Proposition 8, courts applying *McGaughran* have regarded it as standing for the proposition that under the Fourth Amendment, an officer conducting a stop for a traffic violation may detain the offender at the scene only for the time reasonably necessary to discharge the duties the officer incurs as a result of the stop. (E.g., *People v. Tully* (2012) 54 Cal.4th 952, 980; *People v. Gallardo* (2005) 130 Cal.App.4th 234, 238; *People v. Brown* (1988) 62 Cal.App.4th 493, 496-498 (*Brown*).)

An instructive application of that principle is found in *Brown*. (*Brown*, *supra*, 62 Cal.App.4th at pp. 496-498.) There, a police officer stopped a person riding a bicycle at night without a light or reflectors, in violation of Vehicle Code section 21201, subdivision (d). (*Brown, supra,* at p. 495.) As the officer was contemplating issuing a citation, he requested identification from the bicyclist, who produced a state identification card. (*Ibid.*) The officer then ran a routine warrant check, which took about a minute. (*Ibid.*) During that minute, in response to the officer's inquiries, the bicyclist stated that he was on searchable probation and denied possessing guns or illegal material. (*Ibid.*) With the bicyclist's consent, the officer searched the bicyclist's fanny pack and discovered methamphetamine. (*Id., supra,* at pp. 495-496.) The appellate court rejected the bicyclist's contention that the discovery of the methamphetamine resulted from a detention unlawfully prolonged by the

warrant check, as the check was routine and lasted only one minute. (*Id*. at pp. 497-498.)

Appellant contends that because the pertinent incident involved a parking violation, the officers' request for identification and subsequent warrant check necessarily extended the period of his detention in a unlawful manner. He argues: "Vehicles parked in red zones are routinely issued parking tickets when the vehicle is unoccupied and the driver/owner is not present. In this particular case, there was no reason to even have contact with appellant and ask for his identification. By asking appellant for his identification and running a warrant check, the officer's conduct constituted an improper 'fishing expedition,' extending the traffic detention beyond what is reasonably required to issue a citation or warning for parking in a red zone."

Appellant's contention fails, as officers may request identification when there is a parking violation and the vehicle's driver or owner is present. In *People v. Hart* (1999) 74 Cal.App.4th 479, 488-489 (*Hart*), police officers responded to a nighttime call regarding a suspicious van in a residential neighborhood and found that it was illegally parked. When officers knocked on the van's door, the driver opened the door. (*Id*. at pp. 483-484.) The officers asked the driver to produce identification, but she replied that her identification was lost somewhere inside the van. (*Ibid*.) After the driver refused to consent to a search of the van, the officers looked inside the van for her identification and

discovered her purse, which contained her identification and quantities of illegal drugs. (*Ibid*.) On appeal, the driver contended that the search was unlawful, arguing, inter alia, that the officers were not entitled to request her identification for a parking violation. (*Id*. at p. 488.) Rejecting that contention, the appellate court concluded that under the Vehicle Code, in instances of parking violations, officers are authorized to detain the vehicle's driver or owner, if present, and request identification. (*Hart, supra,* at pp. 488-489; see also *United States v. Choudry* (9th Cir. 2006) 461 F.3d 1097, 1098-1104 [San Francisco police officers did not contravene the Fourth Amendment in detaining driver for parking violation and requesting identification, as the Vehicle Code authorizes an investigatory stop].)[11]

Appellant has thus failed to show that the officers' request for identification and subsequent warrant check unreasonably prolonged his detention. In view of *Hart*, the officers were permitted to detain appellant for a parking violation and request his identification without contravening the Fourth Amendment; furthermore, in view of *Brown*, the

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11 Appellant's reliance on *People v. Bell* (1996) 43 Cal.App.4th 754, reversed on another ground in *People v. Brendlin* (2006) 38 Cal.4th 1107, 1115-1123, is misplaced. In that decision, the appellate court held that police officers did not unreasonably prolong a traffic stop by engaging the car's passenger in small talk after issuing a citation to the driver. (*People v. Bell, supra*, 43 Cal.App.4th at pp. 765-768.) *Bell* is thus inapposite.

officers were permitted to conduct a warrant check, provided it did not unreasonably extend the period of appellant's detention. According to the officers' testimony, after seeing appellant's truck illegally parked, Officer Carrasco requested appellant's identification, immediately conducted a warrant check by means of the patrol car's computer, and determined there was an outstanding warrant. As the officers did not state any problems occurred in conducting the warrant check, their testimony supports the reasonable inference that it took little time. Because the officers were not questioned regarding the precise duration of the warrant check, there is no evidence establishing that the officers' request for identification and warrant check unlawfully prolonged appellant's detention. In sum, appellant has established no error regarding the denial of his section 1538.5 motion.

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.