Filed 1/10/13 P. v. Lira CA2/6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Appellant, v. ERNEST LIRA, Defendant and Respondent.	2d Crim. No. B238745 (Super. Ct. No. BA388935) (Los Angeles County)

A Sheriff's deputy saw the respondent, Ernest Lira, carrying a "bright colored" women's purse. Lira also had a knapsack on his back. The trial court opined that "a man with a purse is not unusual in Los Angeles." Perhaps. But, when the contents of the purse are poured into the knapsack and the purse discarded, the interest of an observant Sheriff's deputy is properly and lawfully aroused. As we shall explain, the initial contact between the deputy and Lira was a "consensual encounter," not a detention, and the facts presented here "permit -- even demand -- an investigation: the public rightfully expects a police officer to inquire into such circumstances 'in the proper discharge of the officer's duties.' [Citation.]" (*In re Tony C.* (1978) 21 Cal.3d 888, 894, superseded by statute on another issue.)

Lira was charged with receiving stolen property (Pen. Code, § 496, subd. (a)),[1] with an alleged prior "strike" conviction (§§ 1170.12, subds. (a)-(d), 667), and prior prison term (§ 667.5, subd. (b)). The trial court granted Lira's motion to suppress evidence (§ 1538.5) and dismissed the case (§ 1385, subd. (a)). The People appeal. (§ 1238, subd. (a)(7).) We reverse.

FACTUAL AND PROCEDURAL BACKGROUND

Los Angeles County Sheriff's Deputy Guadalupe Rivas was driving by Union Station in Downtown Los Angeles one morning. Alone in his marked patrol car, Rivas saw Lira standing on the sidewalk holding a bright-colored women's purse. Rivas saw Lira pour the contents of the purse into a backpack he had removed from his shoulder, throw the purse to the ground, close the backpack and return it to his shoulder. Rivas immediately approached Lira to determine if the transferred property belonged to him. Rivas did not intend to cite Lira.

On contacting Lira, Rivas "asked him what he was up to, what was going on." Lira "stated that he had been walking by and saw a purse on the floor, said he decided to pick it up and noticed it was empty. So he threw it back on the floor . . . ." Rivas then asked Lira "if he had any ID on his person." Lira said it "probably" was in his backpack. Rivas asked Lira if he "could take the backpack," and Lira handed it to him. While Lira stood in front of the vehicle, the deputy placed the backpack on the hood of the vehicle and opened it. Inside the backpack, the deputy "found numerous miscellaneous items" which he checked for Lira's identification. After finding an organizer or billfold containing a woman's identification, Rivas placed Lira under arrest.

The trial court granted Lira's motion to suppress evidence under section 1538.5[2] and dismissed the charges. The court explained: "In my view, Deputy Rivas did

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[1] All statutory references are to the Penal Code.

[2] Section 1538.5 provides in relevant part: "(a)(1) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds: [¶] (A) The search or seizure without a warrant was unreasonable."

not have quite enough to detain the defendant. A man with a purse is not unusual in Los Angeles. The deputy knew nothing about the defendant, and he knew nothing about whose purse it was or whose contents were in the purse. . . . In short, all the deputy had was a bit of a hunch coupled with the circumstance of a man with a purse emptying its unknown contents into his large carryall." The trial court elaborated: "Had the deputy had a report of [a] recent . . . purse-snatching in the vicinity, that might have been enough. Ditto, a recent lost purse. Had the deputy had information about the defendant that he was on parole or probation for receiving stolen property or misappropriating lost property, that might have been enough. If he knew something about the contents, that might have been enough. But, unfortunately, he did not have any of that."

DISCUSSION

On appeal, the People contend the trial court erred in granting the motion to suppress because (1) Deputy Rivas's initial contact with Lira was a consensual encounter, (2) even if the contact was a detention, it was lawful and (3) Lira consented to the search of the backpack. We agree.

On review of the trial court's denial or grant of a suppression motion, we defer to the trial court's factual findings if supported by substantial evidence, but exercise our independent judgment to determine whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment. (*People v. Camacho* (2000) 23 Cal.4th 824, 830; *People v. Glaser* (1995) 11 Cal.4th 354, 362.)

The Fourth Amendment proscribes "'. . . unreasonable searches and seizures . . . .'" (*United States. v. Mendenhall* (1980) 446 U.S. 544, 550, 554-555 (*Mendenhall*).) A consensual encounter with a police officer is neither "unreasonable" nor a "seizure." (*Id.* at pp. 554-555.) A consensual encounter occurs, for example, when an officer approaches a person in public and asks how he or she is doing, or questions a person at a crime scene in a nonaccusatory and routine manner to determine whether he or she may have information about the crime. (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1081.) "Unlike a consensual encounter, a detention is a seizure within the meaning

of the Fourth Amendment of the United States Constitution; a seizure occurs when an officer restrains a person's liberty by force or show of authority. [Citation.]" (*Ibid.*)

"'Although there is no "bright-line" distinction between a consensual encounter and a detention . . . "the police can be said to have seized an individual 'only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave."'" [Citations.] "'The test is necessarily imprecise, because it is designed to assess the coercive effect of police conduct, taken as a whole, rather than to focus on particular details of that conduct in isolation.'" [Citation.]" (*Ford v. Superior Court* (2001) 91 Cal.App.4th 112, 124.) "Circumstances establishing a seizure might include any of the following: the presence of several officers, an officer's display of a weapon, some physical touching of the person, or the use of language or of a tone of voice indicating that compliance with the officer's request might be compelled. [Citations.]" (*In re Manuel G.* (1997) 16 Cal.4th 805, 821.) "In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person." (*Mendenhall, supra,* 446 U.S. at p. 555.)

Here, the trial court concluded Rivas's initial contact with Lira was a detention. The facts are not in dispute. Thus, we apply our independent judgment in determining whether the officer's conduct was reasonable. (*People v. Camacho*, *supra*, 23 Cal.4th at p. 830.) In our view, the trial court's analysis was faulty from the beginning: the encounter was, as a matter of law, "consensual" and did not constitute a detention.

The trial court accepted Rivas's testimony that he saw Lira toss a women's purse onto a public sidewalk after dumping its contents into a backpack. The court acknowledged the deputy then approached Lira on the sidewalk and asked "what he was up to, what was going on." There is no evidence the deputy, who was acting alone, used words, gestures or other coercive conduct to detain Lira. To the contrary, the evidence suggests Lira was at all times free to disregard the deputy's questions and walk away. (See *Mendenhall, supra,* 446 U.S. at pp. 554-555.)

The deputy's request to see Lira's identification did not convert the contact into an unlawful detention. In *Mendenhall*, the officers asked to see the respondent's identification and airline ticket. (*Mendenhall*, *supra*, 446 U.S. at p. 555.) The court determined that "[s]uch conduct, without more, did not amount to an intrusion upon any constitutionally protected interest. The respondent was not seized simply by reason of the fact that the agents approached her, asked her if she would show them her ticket and identification, and posed to her a few questions. Nor was it enough to establish a seizure that the person asking the questions was a law enforcement official. [Citations.]" (*Ibid.*; accord *Florida v. Royer* (1983) 460 U.S. 491, 501 ["Asking for and examining [the defendant's airline] ticket and his driver's license were no doubt permissible in themselves . . . ."].) Indeed, Lira concedes Rivas's request for identification, in and of itself, does not characterize the contact as a detention.

Nonetheless, even if the contact could be construed as a detention, it was lawful given the totality of the circumstances. To justify a detention, "the circumstances known or apparent to the officer must include specific and articulable facts which, . . . [would cause the officer] to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person [the officer] intends to stop or detain is involved in that activity." (*In re Tony C.*, *supra*, 21 Cal.3d at p. 893.) "The corollary to this rule . . . is that an investigative stop or detention predicated on mere curiosity, rumor, or hunch is unlawful, even though the officer may be acting in complete good faith. . . ." (*Ibid.*, citing *Terry v. Ohio* (1968) 392 U.S. 1, 22.)

The trial court determined Rivas did not have reasonable suspicion to detain Lira because all he had "was a bit of a hunch coupled with the circumstance of a man with a [women's] purse emptying its unknown contents into his large carryall." This analysis omits the fact that Rivas saw Lira throw the purse on the ground after emptying its contents into the backpack. It also omits the fact that Lira falsely told the deputy he had picked up the purse, "noticed it was empty" and then threw it back on the floor. Rivas testified he did not find it suspicious that Lira was holding a women's purse. He

found it suspicious that Lira "transferr[ed] items from [the] purse into his backpack and then discard[ed] the purse . . . ."

Officers are expected "to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well allude an untrained person.' [Citations.]" (*U. S. v. Arvizu* (2002) 534 U.S. 266, 273.) It is not the function of judges "to second-guess on-the-spot decisions of officers in the field under these circumstances." (*People v. Wilson* (1997) 59 Cal.App.4th 1053, 1063; see *Tamborino v. Superior Court* (1986) 41 Cal.3d 919, 925.) The totality of the circumstances supported a reasonable suspicion that Lira possessed and was concealing stolen property, i.e., the contents of the discarded purse.

Lira contends that even if the initial detention was lawful, it became unlawful when Rivas searched his backpack. We are not persuaded. Consent to a search may be nonverbal and implied by conduct. (*People v. Harrington* (1970) 2 Cal.3d 991, 995, superseded on other grounds as stated in *People v. Coffman* (2004) 34 Cal.4th 1, 116-117.) Indeed, the trial court observed "consent can be by an act."

In *United States v. Drayton* (2002) 536 U.S. 194, 204, the Supreme Court found voluntary consent when police officers boarded a bus and requested consent to search persons and luggage. An officer asked the defendant, "Mind if I check you?" The defendant gave no verbal response, but lifted his hands above his legs. (*Id.* at p. 199.) During a patdown of the defendant's thighs, the officer detected hard objects which turned out to be contraband. (*Id.* at p. 194.) The court concluded the defendant's actions were an implied consent to search. (*Id.* at p. 204.) The court noted "[t]here was no application of force, no intimidating movement, no overwhelming show of force, no brandishing of weapons, no blocking of exits, no threat, no command, not even an authoritative tone of voice. It is beyond question that had this encounter occurred on the street, it would be constitutional." (*Ibid.*; see *Mendenhall*, *supra*, 446 U.S. at pp. 554-555.)

Here, the encounter occurred on the sidewalk next to the street. When Rivas asked for identification, Lira said it "probably" was in his backpack. When the

deputy asked Lira if he could "take" the backpack to check for identification, Lira handed it to him. This nonverbal gesture constituted consent. (*United States v. Drayton*, *supra*, 537 U.S. at p. 204; *People v. James* (1977) 19 Cal.3d 99, 113 ["Indeed, no words at all need to be spoken; in appropriate circumstances, consent . . . may be unmistakably manifested by a gesture alone"].)

DISPOSITION

The orders granting the motion to suppress evidence and dismissing the charges against Lira are reversed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

William C. Ryan, Judge

Superior Court County of Los Angeles

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