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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

SERGIO CARDENAS,

Defendant and Appellant.

2d Crim. No. B236503
(Super. Ct. No. BA382250)
(Los Angeles County)

Sergio Cardenas appeals a judgment following his no contest plea to transportation of a controlled substance (Health & Saf. Code, § 11379, subd. (a)) after the trial court denied his motion to suppress evidence obtained from a search of his vehicle during a traffic stop. (Pen. Code, § 1538.5.) The evidence he sought to suppress was a package containing methamphetamine. We conclude, among other things, that: 1) the trial court did not err by denying the motion, 2) the traffic stop was not unduly prolonged, and 3) Cardenas voluntarily consented to a search of his vehicle after a consensual encounter with the officer. We affirm.

FACTS

On March 17, 2011, Ronald Bolon, a California Highway Patrol (CHP) officer, saw a Cadillac "drifting from lane line to lane line" at 75 miles an hour. He followed the vehicle, "activated [his] emergency lights," and stopped that car near the

center median of the freeway. Cardenas was driving and a male passenger was in the vehicle.

Bolon asked Cardenas to get out of the car and he walked back to the patrol vehicle. Bolon asked him questions to determine whether he was under the influence of alcohol or drugs. Cardenas told him he had not been drinking. He said he just bought the vehicle and "the steering was loose."

Bolon determined he was not under the influence. There was no paperwork showing that Cardenas had bought the car or was the registered owner. Bolon told Cardenas he had to check the vehicle identification number. After verifying the identification number, Bolon walked back to Cardenas and said "everything matches." He told Cardenas he "was free to go," he shook his hand, and "allowed him to walk" back to the Cadillac.

After Cardenas "reached the rear of his vehicle," Bolon testified, "I just asked him if I could ask . . . him a few questions." Cardenas replied that "he had no problem" and he walked back to where Bolon was standing. Bolon testified, "I advised him that there is a lot of illegal activity on the freeway, and I asked him if I could search the vehicle for illegal drugs and guns."

Cardenas "shrugged his shoulders" and said Bolon "could search it." Cardenas said "[h]e didn't know if there was anything in it because he had just bought the vehicle." Cardenas signed a CHP consent to search form. "[A]pproximately 17 minutes" elapsed from the traffic stop to the time Cardenas signed that form.

A "[CHP] K9" officer used a dog "to do an exterior sniff of the vehicle." The dog detected something near the left rear door of the car and the trunk. The officer conducted an interior search. He found a package "wrapped in gray duct tape," the type commonly used to transport one-pound packages of methamphetamine. It was located in "the rear interior wheel well of the vehicle." Bolon testified the time interval between the initial traffic stop and finding that package was approximately 25 to 30 minutes.

Cardenas filed a "motion to suppress evidence" pursuant to Penal Code section 1538.5. He claimed the consent he gave for the search "was the fruit of an

unlawfully prolonged detention." He did not testify at the hearing. The court denied the motion. It found the time spent for the traffic stop investigation was "justifiable" and there was "valid" consent given for the search.

DISCUSSION

Unduly Prolonged Detention and Involuntary Consent to a Search

Cardenas contends the trial court erred by denying his motion to suppress the evidence obtained during the search of the vehicle. He claims he was subject to an "unduly prolonged detention" and the consent he subsequently gave for the search was involuntary.

The People claim Cardenas voluntarily consented to the search of the vehicle after a consensual encounter with the officer, and the traffic stop was not unreasonably prolonged. We agree.

Cardenas is not challenging the initial traffic stop. He concedes that Officer Bolon had "the reasonable suspicion necessary to stop [him]" because he was "weaving" in his traffic lane.

Cardenas claims, however, that the search of the vehicle was conducted without valid consent. Consent is an exception to the Fourth Amendment warrant requirement for police searches. (*People v. James* (1977) 19 Cal.3d 99, 106.) But to be valid, the consent must be voluntary. "The voluntariness of the consent is in every case 'a question of fact to be determined in the light of all the circumstances.'" (*Ibid.*)

Here Bolon asked Cardenas "if [he] could search the vehicle for illegal drugs and guns." Cardenas shrugged his shoulders and said Bolon "could search it." "We see no other way to interpret appellant's word and gesture than as an expression of his consent to a search of his vehicle." (*People v. Ramirez* (1997) 59 Cal.App.4th 1548, 1559.) He added that "he didn't know if there was anything in it because he had just bought the vehicle."

Bolon testified that after receiving Cardenas's oral consent to search, he asked Cardenas to sign a "CHP" consent to search form. He advised Cardenas what the form was. Cardenas said "he understood what this form meant," and he signed it.

There was a Spanish passenger in the vehicle. Bolon decided he should also obtain his consent. He provided the passenger with a Spanish language CHP consent to search form, which the passenger signed. The CHP did not begin a search until after Bolon obtained the oral and written consent of Cardenas and his passenger.

The trial court found the consent form was "valid" and that it provided notice to Cardenas that he "[could] withdraw [his] consent at any time."

Cardenas contends the consent Bolon obtained was not voluntary because it was "the product of [an] unduly prolonged detention." (Italics omitted.) The People claim there was no detention after Cardenas was told he was free to go, it was a "consensual encounter," and the time period that elapsed between initial traffic stop and the signing of the consent form was not unreasonable.

A detention occurs where, as a result of police actions, an individual is not "free to leave" the area where the traffic stop occurs. (*People v. Fisher* (1995) 38 Cal.App.4th 338, 343; *People v. Gonzalez* (1992) 7 Cal.App.4th 381, 384 ["Appellant was detained when the officer told him to get back in the car"].)

But "[a]n officer has every right to talk to anyone he encounters while regularly performing his duties." (*People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1227.) "Until the officer asserts some restraint on the contact's freedom to move, no detention occurs." (*Ibid.*) "The test is at what point in the conversation would 'a reasonable person [no longer] feel free to leave. . .'" (*Ibid.*) "Unlike a detention, a consensual encounter between a police officer and an individual does not implicate the Fourth Amendment." (*People v. Rivera* (2007) 41 Cal.4th 304, 309.) "Consensual encounters require no articulable suspicion of criminal activity." (*Ibid.*)

The People claim Bolon did not impose any restraint on Cardenas's freedom to move. Bolon testified that after checking the vehicle identification number, he "advised [Cardenas] that he was free to go." He shook his hand and "allowed him to walk back towards his vehicle." At this point Cardenas could not reasonably believe that he was being detained.

Cardenas claims this changed when the officer made his next remark. Bolon testified he "just asked" Cardenas if he could "ask him a few questions." Cardenas said "he had no problem" with this and he walked back to the area where Bolon was standing. He was not physically restrained. There is no evidence that Bolon threatened, or coerced him, or that he issued any command or order. Bolon testified all he did was to simply ask this question. Bolon's conduct towards Cardenas was cordial; they had just shook hands. Bolon told him he was "free to go" before asking that question. There was no restraint on Cardenas's freedom when he consented to the search. In addition, the "defendant was, of course, free to decline consent." (*People v. Gallardo* (2005) 130 Cal.App.4th 234, 239.) "The mere asking of permission to enter and make a search carries with it the implication that the person can withhold permission for such an entry or search." (*People v. Ramirez, supra*, 59 Cal.App.4th at p. 1559.) The trial court also found Cardenas was advised of his right to withdraw consent at any time. But he elected not to do so. The trial court's findings of voluntary consent "whether express or implied--must be upheld if supported by substantial evidence." (*Ibid.*)

According to Cardenas, the detention continued after the hand shake and this vitiated his consent. But Cardenas did not testify at the hearing and he consequently presented no evidence to support the claim that he believed he was detained, coerced, or that his consent was not voluntary. Nor has he shown that he misunderstood the phrase "free to go." He suggests the request for permission to search following the statement he was free to go necessarily involves coercion and constitutes a continuing detention. But "defendant was told that he was free to go and the only coercion involved in the officer's request for consent to search was the inherent coercion involved in any encounter with a uniformed officer. Under those circumstances, it would not have been reasonable for defendant to believe that he was not free to go." (*State v. Bonham* (Or.Ct.App. 1993) 852 P.2d 905, 908.) The officer's "request was just that--a request. He did not threaten or coerce defendant or take any action that significantly restricted, interfered with or otherwise deprived defendant of his liberty or freedom of movement." (*Ibid.*)

Cardenas suggests that because Bolon completed his traffic stop investigation, Bolon violated the Fourth Amendment by requesting permission to ask him about drug possession, a new issue unrelated to the traffic stop. But "[m]ere questioning is neither a search nor a seizure. [Citations.] While the traffic detainee is under no obligation to answer unrelated questions, the Constitution does not prohibit law enforcement officers from asking." (*People v. Gallardo*, *supra*, 130 Cal.App.4th at p. 239.) "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.)

Cardenas contends Bolon could not ask him to consent to a search for drugs without reasonable suspicion that he possessed drugs. He claims the only reasonable suspicion Bolon had related to stopping his car because his driving made it appear that he was intoxicated. But "reasonable suspicion" is not "required to request consent to search." (*People v. Gallardo*, *supra*, 130 Cal.App.4th at p. 239.) In *Gallardo*, the officer initiated a traffic stop because of a broken tail light. He inspected the defendant's license and registration. He asked the defendant if there was anything illegal in the car such as weapons or drugs. The defendant denied possessing such items. The officer then requested permission to conduct a search of the vehicle and the defendant consented. The officer found a methamphetamine pipe. The defendant moved to suppress the evidence claiming that even if the officer could stop him for the tail light, he needed reasonable suspicion to request consent for a search. The Court of Appeal disagreed and held the officer did not need reasonable suspicion to ask permission to search and the defendant had the right to decline the request. It ruled the officer's request was not unconstitutional because it did not unduly prolong the traffic stop.

Here the total time that elapsed between the initial traffic stop and the signing of the consent form was 17 minutes. Bolon testified that the interval between the traffic stop and the handshake was 10 to 15 minutes. Consequently, the period between the hand shake and the signing of the consent form was either two or seven minutes. But

the interval during the critical period between the hand shake and Cardenas's oral consent to search was much shorter. It only involved the time to walk back to Bolon and answer a question. That did not unduly prolong the traffic stop.

Moreover, 17 minutes is not an unreasonably long period to investigate a driver's sobriety, to check an identification number, investigate suspicious information about ownership and explain a defendant's rights involving a consent to search form. Courts have found that substantially longer periods of physical detention were not unreasonable where officers were conducting a diligent investigation. (*Gallegos v. City of Los Angeles* (9th Cir. 2002) 308 F.3d 987, 992 [45 minutes to one hour]; *People v. Soun* (1995) 34 Cal.App.4th 1499, 1520 [30 minutes]; *In re Carlos M.* (1990) 220 Cal.App.3d 372, 384-385 [30 minutes].) Here there was a complication. Cardenas said he recently purchased the car. But Bolon testified "there was no paperwork showing that he had just bought it," and that information had to be checked. He wanted to determine whether this was a stolen vehicle. He had reason to believe that Cardenas's actions were suspicious. Bolon testified that after the traffic stop he noticed that Cardenas hands were "shaking." The time taken to explain the consent form occurred after Cardenas had given his oral consent to search. That provided Cardenas an additional opportunity to decide whether he wanted to decline consent. There is no evidence that Bolon wasted time, unduly prolonged the investigation, or acted in any unreasonable or unprofessional manner after the traffic stop. The trial court did not err by denying the motion.

The judgment is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Clifford L. Klein, Judge
Superior Court County of Los Angeles

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

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