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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JENNIFER KWIATKOWSKI,

Defendant and Appellant.

2d Crim. No. B280157
(Super. Ct. No. 2015027450)
(Ventura County)

Jennifer Kwiatkowski appeals a judgment following the denial of her motion to suppress evidence (Pen. Code, § 1538.5) seized as a result of a traffic stop. After the denial of her motion, Kwiatkowski pled guilty to transportation for sale of a controlled substance, methamphetamine. (Health & Saf. Code, § 11379, subd. (a).) We conclude, among other things, that the police had a reasonable suspicion to stop her car based on the way she was driving and that the trial court properly denied her suppression motion.

The trial court imposed an aggregate six-year split sentence with three years in county jail and three years on

mandatory supervision. In reaching this sentence, the court imposed a consecutive three-year enhancement for a prior felony drug offense conviction under Health and Safety Code section 11370.2, subdivision (c). The passage of Senate Bill 180 abolishes that enhancement (Stats. 2017, ch. 677, § 1), and this change in the law is retroactive.

We affirm the judgment of conviction and strike the enhancement.

FACTS

On the evening of August 27, 2015, Police Officer Chris Mulligan was driving his patrol car on Sycamore Street in the city of Simi Valley. That street has two northbound lanes and two southbound lanes. Mulligan testified that his "attention [was] drawn" to an Acura driven by Kwiatkowski who was driving southbound on Sycamore Street. He saw the tires of her car "drift over to the number two lane and then correct back to the number one lane." Within approximately 100 yards, Kwiatkowski's "vehicle again drifted over to the number two lane." He said that the car "[c]rossed the white line and the tires entered the number two lane" for "approximately three seconds before recorrecting to the number one lane."

Mulligan conducted a "traffic stop." He believed Kwiatkowski might be "under the influence" of a controlled substance or alcohol, and her "[l]ane traveling" violated the Vehicle Code.

Mulligan arrested Kwiatkowski for driving under the influence of a controlled substance. In a "search incident to the arrest," police discovered Kwiatkowski possessed a bag containing methamphetamine.

After the People filed a felony complaint, Kwiatkowski filed a motion to suppress evidence pursuant to Penal Code section 1538.5. She said she sought "to exclude all evidence discovered in her vehicle and on her person after police conducted a traffic stop . . . without reasonable suspicion."

Kwiatkowski and the People stipulated that the "scope" of the hearing on her motion would be "whether or not there was evidence for a stop."

After Mulligan testified, the trial court denied the motion. It ruled the officer's decision to stop her vehicle was supported by a reasonable suspicion that Kwiatkowski had violated the Vehicle Code. It found Kwiatkowski crossed her lane line "twice within approximately 100 yards." The court also said, "The officer said that he believes she might be under the influence of alcohol. . . . It seems to me that's probable cause to stop for possible DUI . . . ."

DISCUSSION

The Suppression Motion

Kwiatkowski contends the trial court erred by denying her motion to suppress evidence because "the officer lacked reasonable suspicion for the initial stop." (Boldface omitted.) We disagree.

"The denial of a suppression motion may be challenged by an appeal from the judgment entered after defendant's guilty or no contest plea." (*People v. Leath* (2013) 217 Cal.App.4th 344, 350.) In reviewing the ruling, "'"[w]e defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment."'" (*Ibid.*)

"'The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures of persons, including unreasonable investigative stops.'" (*People v. Leath*, *supra*, 217 Cal.App.4th at p. 350.)

At the beginning of the hearing on Kwiatkowski's motion, the parties stipulated that "the scope of the motion is . . . whether or not there was evidence for a stop." The trial court found the officer had reasonable suspicion for the stop because Kwiatkowski crossed the lane line "twice within approximately 100 yards."

"A police officer's reasonable suspicion that a driver has violated the Vehicle Code justifies a traffic stop and detention." (*People v. Corrales* (2013) 213 Cal.App.4th 696, 699.) Vehicle Code section 21658 provides, in relevant part, "Whenever any roadway has been divided into two or more clearly marked lanes for traffic in one direction, the following rules apply: [¶] (a) A vehicle shall be driven as nearly as practical *entirely within a single lane* . . . ." (Italics added.) A defendant may be convicted of violating Vehicle Code section 21658 where he or she does not "drive as nearly as practicable entirely within one lane." (*People v. Butler* (1978) 81 Cal.App.3d Supp. 6, 8.) This state has a long history of prohibiting drivers from "straddling the line between two lanes." (*Moore v. Miller* (1942) 51 Cal.App.2d 674, 682.)

Kwiatkowski contends she is entitled to a reversal in light of *United States v. Colin* (9th Cir. 2002) 314 F.3d 439, which interpreted Vehicle Code section 21658. But we are "not bound by the decisions of the lower federal courts." (*People v. Bradley* (1969) 1 Cal.3d 80, 86.) Moreover, *Colin* is distinguishable. In *Colin*, the court held police did not have reasonable suspicion to stop a vehicle where the tires of the car "*touched*" the "fog line

and the solid yellow-painted line" of an interstate highway. (*Id.* at p. 444.) It said the driver did not violate Vehicle Code section 21658 because merely "touching the line is not enough to constitute lane straddling." (*Ibid.*) But the court also emphasized that the tires of the vehicle in *Colin* "*did not cross*" the lane lines. (*Ibid.*)

Here, by contrast, Kwiatkowski's tires twice crossed the lane line and "drifted over to the number two lane." That violated Vehicle Code section 21658. (*People v. Butler*, *supra*, 81 Cal.App.3d Supp. at p. 8.)

Moreover, the trial court also found the police officer had a reasonable suspicion that Kwiatkowski was driving under the influence. Officer Mulligan testified that based on her "driving pattern," he believed "she was under the influence of [a] controlled substance or alcohol." Crossing her lane line into another lane twice within a distance of 100 yards provided reasonable grounds for a traffic stop. "[I]t has been clearly established in this state that weaving from one lane to another justifies an investigatory stop . . . ." (*People v. Perez* (1985) 175 Cal.App.3d Supp. 8, 10.) "Weaving within a lane is a widely recognized characteristic of an intoxicated driver . . . ." (*Arburn v. Department of Motor Vehicles* (2007) 151 Cal.App.4th 1480, 1485; *People v. Russell* (2000) 81 Cal.App.4th 96, 104 ["[D]river was drifting around in his lane. This justified the stop"].) There was no error.

The Sentence

In reaching the six-year split sentence, the trial court complied with Health and Safety Code section 11370.2. Because Kwiatkowski had a prior felony drug conviction for violating Health and Safety Code section 11378 in 2007, the court imposed

a consecutive three-year term as an enhancement as required by Health and Safety Code section 11370.2, subdivision (c).

But as Kwiatkowski and the People note, the recent passage of Senate Bill 180 amends Health and Safety Code section 11370.2, subdivision (c) and abolishes that consecutive three-year enhancement for a prior conviction under Health and Safety Code section 11378. (Stats. 2017, ch. 677, § 1.) This change in the law became effective January 1, 2018. (*People v. Camba* (1996) 50 Cal.App.4th 857, 865-866.) It applies retroactively to benefit Kwiatkowski. (*People v. Rossi* (1976) 18 Cal.3d 295, 299-301.)

DISPOSITION

We strike the three-year enhancement. As so modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Bruce A. Young, Judge

Superior Court County of Ventura

Kevin E. Lerman, 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, Victoria B. Wilson, Supervising Deputy Attorney General, Lindsay Boyd, Deputy Attorney General, for Plaintiff and Respondent.