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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. TARAN WILKERSON, Defendant and Appellant.	2d Crim. No. B279898 (Super. Ct. No. BA424248) (Los Angeles County)

Taran Wilkerson was suspected of involvement in a large scale drug transaction. He fled from police officers resulting in a high speed chase during which his car flipped over and a pedestrian was killed. At his criminal trial, he unsuccessfully moved to suppress evidence of the drugs he was transporting and went on to focus his defense on a charge of murder (Pen. Code,[1] § 187, subd. (a)). The jury acquitted him of that charge, but convicted him of gross vehicular manslaughter (§ 192, subd.

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

(c)(1)), evading an officer causing death (Veh. Code, § 2800.3, subd. (b)), two counts of leaving the scene of an accident resulting in death (*id.*, § 20001, subd. (a)), possessing cocaine for sale (Health & Saf. Code, § 11351), selling, transporting, or offering to sell cocaine (*id.*, § 11352, subd. (a)), and three counts of hit-run driving (Veh. Code, § 20002, subd. (a)). The jury also found true special allegations that after committing the manslaughter appellant fled the scene of the crime (*id.*, § 20001, subd. (c)), and that the cocaine he possessed and transported exceeded 20 kilograms by weight (Health & Saf. Code, § 11370.4, subd. (a)(4)). The trial court sentenced him to a total term of 22 years and 8 months in state prison. Wilkerson appeals, contending that the court erred in denying his motion to suppress under section 1538.5. We affirm.

STATEMENT OF FACTS

On the evening of April 29, 2014, California Highway Patrol Officers Sabino Gonzalez and Richard Cheever were in separate patrol cars assisting with a narcotics investigation. Officer Gonzalez was near the on-ramp for the westbound 105 Freeway at Long Beach Boulevard when he was informed that a black Chevrolet Suburban with Nevada license plates had left a nearby house that was under surveillance and was proceeding onto the westbound freeway at the officer's location. After Officer Gonzalez followed the Suburban onto the freeway, he saw it "tailgating" another vehicle at a speed of up to 70 miles per hour.

Officer Gonzalez pulled up behind the Suburban and activated his lights to effect a traffic stop for following another vehicle too closely in violation of Vehicle Code section 21703. Appellant was driving the Suburban and Christopher Woodbury

was the front seat passenger.[2] In addition to activating his lights, Officer Gonzalez got on his vehicle's loud speaker and repeatedly ordered appellant to exit the freeway. At first it appeared that appellant was going to pull over at the Vermont Avenue off-ramp, where traffic was backed up. Instead, he drove onto the right shoulder of the off-ramp, cut left across traffic to the gore point,[3] and stopped. Officer Gonzalez once again ordered appellant to exit the freeway. Appellant returned to the freeway, continued driving toward the next exit at Crenshaw Boulevard, took the exit, and stopped.

Officer Gonzalez pulled up behind the Suburban, got out of his patrol car, and ordered appellant to step out of his vehicle and walk back towards the officer's car. Officer Cheever pulled up behind Officer Gonzalez's vehicle and exited his patrol car with his rifle. Instead of complying with Officer's Gonzalez's demands, appellant sped away and both officers pursued him. Appellant drove at a high rate of speed and ran several red lights. He eventually collided with another vehicle in an intersection and hit a pedestrian, who later died from his injuries. Officer Gonzalez saw appellant get out of the Suburban, which was upside-down, and run into a nearby parking lot where he was later taken into custody. Woodbury was injured in the collision and was transported to the hospital and later arrested.

Officer Gonzales saw suitcases lying on the ground near the overturned Suburban. Additional suitcases were found inside the

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[2] Woodbury is not a party to this appeal.

[3] Officer Gonzalez described a gore point as the "slice of pie"-shaped area that "delineates the separation" between a freeway and an off-ramp.

vehicle. The officer had his K-9 dog sniff the suitcases on the ground and the dog alerted to them. All of the suitcases were searched and were found to contain a total of 23 kilograms of cocaine with a street value of up to $1,725,000. Mobile video audio recordings (MVAR) of the incident, which were obtained from Officer Gonzalez's and Officer Cheever's patrol cars, were played for the jury.

Appellant testified on his own behalf. He admitted that he and Woodbury flew from New York to Las Vegas, rented the Suburban, and drove it to Los Angeles because they were being paid $15,000 to transport suitcases containing cocaine to a hotel. He denied tailgating anyone on the freeway and claimed he initially thought that Officer Gonzalez was pulling over another vehicle. He pulled over at the Crenshaw Boulevard exit, but panicked when he saw the officers with their guns because he had once witnessed an officer-involved shooting.

DISCUSSION

Appellant contends the court erred in denying his section 1538.5 motion to suppress. We disagree.

Prior to trial, appellant moved to suppress the cocaine found in the suitcases he was transporting and the statements he made after his arrest on the ground that Officer Gonzalez "lack[ed] . . . reasonable suspicion for [appellant's] detention and/or probable cause for his arrest." The evidence offered at the suppression hearing was substantially similar to the evidence presented at trial. As relevant here, Officer Gonzalez also acknowledged that the MVAR system in his patrol car was not activated when he observed appellant tailgating another vehicle on the freeway, which was the basis of the traffic stop. The officer explained that the MVAR system in his patrol car was

only activated when he turned on his emergency lights. It was also established that the MVAR footage obtained from Officer Gonzalez's patrol car—which includes the 30 seconds prior to the system's activation—showed that there was no car in front of the Suburban when the officer pulled behind it.

Based on this evidence, appellant's attorney argued that appellant was unlawfully detained in violation of the Fourth Amendment because Officer Gonzalez's proffered reason for initiating a traffic stop was "unbelievable" and the stop was merely pretextual. The People asserted that the facts of the case were "absolutely analogous" to the facts in *California v. Hodari D.* (1991) 499 U.S. 621 (*Hodari D.*), which held that a defendant who does not yield to police commands is not detained for purposes of the Fourth Amendment.

In denying appellant's suppression motion, the court reasoned: "We've never pretended that it was not a pretext stop. I would have preferred that the video . . . showed the [Suburban] following too closely [to] another vehicle, which would have been the . . . Vehicle Code violation that was relied upon by the Highway Patrol that caused the show of authority. But I believe the Hodari D[.] case is controlling; that the suspect vehicle, the Suburban, never complied with the show of authority. Therefore, there was never a detention, and it became irrelevant whether there was a Vehicle Code violation or not. Had the vehicle yielded, submitted to the show of authority, there may be an entirely different footing that we would be on, but it did not. . . . It came close to yielding at a point in time, but it never yielded."

Appellant claims the court erred in finding he was not detained after Officer Gonzalez attempted to effect the traffic stop. We conclude otherwise. When a law enforcement officer

restrains the liberty of a citizen by means of physical force or show of authority, "the officer effects a seizure of that person, which must be justified under the Fourth Amendment to the United States Constitution. [Citations.] In situations involving a show of authority, a person is seized 'if "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave,"' or "'otherwise terminate the encounter,"' [citation], *and if the person actually submits to the show of authority* [citation]." (*People v. Brown* (2015) 61 Cal.4th 968, 974, italics added.)

Here, it is clear that appellant was not detained because he did not submit to Officer Gonzalez's show of authority in initiating the traffic stop. Appellant nevertheless claims that "pulling over and coming to a complete stop on Crenshaw Blvd. . . . demonstrated that [he] submitted to the officer's show of authority" and that "[a] reasonable person in [his] position would not have believed that he was free to leave or terminate this encounter by driving off without permission from the officers."

Appellant's claims are contrary to the facts and the law. It is well-settled that the Fourth Amendment is not implicated when a police officer commands a suspect to stop and the suspect fails to comply. (*Hodari D.*, *supra*, 499 U.S. at pp. 622-623, 626 [defendant ran after seeing a police car, then continued to flee as the officers chased him]; see also *People v. Magee* (2011) 194 Cal.App.4th 178, 191, fn. 12 [no seizure where police kicked down bathroom door and defendant continued to flush drugs down toilet instead of yielding].) Suffice to state that a person who briefly stops in response to a traffic stop, then speeds off before an officer actually makes contact with him, has not submitted to the officer's show of authority. As the People aptly put it, "[t]he

fact that a suspect plays cat and mouse with an officer and leads that officer on a high-speed chase is wholly inconsistent with submission to the authority of the officer." Moreover, appellant's "reasonable person" standard only reinforces the conclusion he was not detained because he acted counter to that standard by fleeing. "A suspect's fleeing and police pursuit—even though a reasonable person in the suspect's position might believe he was not 'free' to leave—is not a 'seizure.' [Citation.]" (*People v. Arangure* (1991) 230 Cal.App.3d 1302, 1307.)

Appellant did not yield to Officer Gonzalez's show of authority in initiating the traffic stop, notwithstanding that he briefly stopped his vehicle before speeding away. Accordingly, he was not detained and the officer's reasons for attempting to effect the stop were irrelevant. (*Hodari D.*, *supra*, 499 U.S. at pp. 623-624, & fn. 1.) Moreover, the officer plainly had probable cause to detain and arrest appellant after he fled. Appellant's motion to suppress was thus properly denied.

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Craig Richman, Judge
Superior Court County of Los Angeles

Alan S. Yockelson, under appointment by the Court of Appeal, for Defendant and Appellant.

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