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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,
Plaintiff and Respondent,
v.
TRAVIS KENDRICK ALEXIS,
Defendant and Appellant.

A171244

(Contra Costa County
Super. Ct. No. 04-22-00736)

Travis Kendrick Alexis (appellant) appeals following his no contest plea to possession of a controlled substance with a firearm (Health & Saf. Code, § 11370.1, subd. (a)) and misdemeanor carrying an unregistered loaded handgun (Pen. Code, § 25850). His sole challenge on appeal is to the denial of his motion to suppress. (Pen. Code, § 1538.5.) We affirm.

BACKGROUND

After the complaint was filed, appellant filed a motion to suppress. The hearing on the motion was held simultaneously with the preliminary hearing. The sole witness was Police Officer Marcus Cardona, who testified he initiated a traffic stop after seeing a vehicle with a broken brake light and expired registration. Appellant was the driver and did not have a valid driver's license, but presented Cardona with a California identification card.

Body camera footage admitted and played at the hearing shows Cardona ask appellant, "Anything inside the car I need to be worried about? Guns, knives, bazookas, nuclear codes?" Appellant replies, "No, sir." After Cardona asks again, "No firearms in the car, though?" appellant informs Cardona he has a "BB gun." Cardona responds, "Ok, anything else I need to be worried about?" and appellant says, "No, sir." Cardona says, "Ok. You ok if I check, make sure? And then we'll get you on your way?" Although appellant's response to this question on the body camera footage is not clearly audible and he appears to say "uh" or "um," Cardona testified that appellant responded " 'uh-huh.' "

After appellant's response, Cardona tells him, "Don't, don't reach for nothing," and "Can we stay off the phone real quick till we're done?" Appellant then says he has seen Cardona somewhere else and, after a brief discussion about this, Cardona says, "Like I said, you cool? I'm just gonna make sure real quick. If it's a BB gun, we'll get you on your way. Ok?" Appellant responds in the affirmative and exits the vehicle.

Cardona determined that an object on the driver's seat floor was a BB gun, and continued to search the vehicle. Cardona found several holsters and magazines that were not compatible with the BB gun, as well as an expandable baton. After approximately nine minutes of searching appellant's car, Cardona found a firearm with live ammunition in a closed box. Cardona then arrested appellant and searched his person, finding methamphetamine.

At the conclusion of the hearing, the trial court denied appellant's motion to suppress: "The original consent which I'm finding officer credible [*sic*] that the indication of 'uh-huh' from the defendant was, in fact, valid and lawful consent that was not the product of any type of intimidation, tactics on behalf of the officer. The issue as far as I'm concerned is whether the consent

was just to check and see if it was a BB gun which happened quite quickly or was it more of a general consent. I did not hear anything limiting about the consent that the defendant gave. [¶] Now the officer may have mentioned that he might take certain action once he verified that it was a BB gun, but that does not mean that the consent was somehow withdrawn. [¶] And so, again, the Court finds that the consent was not limited to just a BB gun."[1]

Appellant subsequently pled no contest to two counts. The trial court suspended imposition of sentence and placed appellant on two years formal probation.

DISCUSSION

Appellant contends his consent was limited to permitting Cardona to verify that the BB gun was, in fact, a BB gun. Therefore, appellant argues, Cardona's search of the remainder of the vehicle was nonconsensual.

" 'In reviewing a trial court's ruling on a motion to suppress evidence, we defer to that court's factual findings, express or implied, if they are supported by substantial evidence. [Citation.] We exercise our independent judgment in determining whether, on the facts presented, the search or seizure was reasonable under the Fourth Amendment.' " (*People v. Silveria and Travis* (2020) 10 Cal.5th 195, 232.) " 'The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of "objective" reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?' [Citation.] 'Whether the search remained within the boundaries of the consent is a question of fact to be determined from the totality of [the] circumstances.

[1] Following arraignment, appellant filed a renewed motion challenging the search. He did not seek to admit additional evidence and the trial court denied the motion based on the record of the prior hearing.

[Citation.] Unless clearly erroneous, we uphold the trial court's determination.' " (*People v. Tully* (2012) 54 Cal.4th 952, 983–984.)

As an initial matter, to the extent appellant argues Cardona's first search request was limited to the BB gun, we disagree. Cardona asked appellant if he had weapons in the car and, when appellant told Cardona he had a BB gun, Cardona responded, "Ok, *anything else* I need to be worried about?" (Italics added.) When appellant responded in the negative, Cardona said, "Ok. You ok if I *check, make sure*?" (Italics added.) Given the sequence of questions immediately preceding the search request, a reasonable person would have understood Cardona to be asking if he could check and make sure that there were no weapons besides the BB gun in the vehicle.

Appellant argues he did not respond affirmatively to this request. As noted above, appellant's response is not clearly audible on the body camera footage, and he appears to say only "uh" or "um." However, Cardona testified unequivocally that appellant's response was " 'uh-huh,' " and the trial court credited this testimony. Appellant argues his subsequent conduct was inconsistent with having responded affirmatively; for example, immediately after appellant's response, Cardona told appellant not to reach for anything and to stay off his phone. That a different factfinder could have reached a different finding as to whether appellant responded affirmatively to Cardona's first request is immaterial. The trial court's finding is supported by substantial evidence.

Appellant contends that when Cardona's requests are considered together, a reasonable person would understand the request to be limited to the BB gun. Appellant cites no authority that a broader initial consent can be limited by a subsequent narrower consent, absent a withdrawal or revocation of the first consent. Appellant consented to Cardona's request to

search his vehicle for weapons; that he subsequently consented to Cardona's request regarding the BB gun did not retroactively narrow the scope of his prior consent.[2]

For the same reasons, appellant's reliance on *People v. Cantor* (2007) 149 Cal.App.4th 961 is unavailing. In that case, the Court of Appeal held an exhaustive and lengthy search exceeded the defendant's consent to a " 'real quick' " check of the vehicle. (*Id.* at p. 965.) Appellant relies on Cardona's second request, during which Cardona said, "I'm just gonna make sure *real quick*." (Italics added.) But appellant's first consent was not so limited. Even if it had been, *Cantor* does not establish the nine-minute search here would have exceeded the scope of such consent. (See *ibid.* ["After receiving defendant's consent, [the officer] proceeded to methodically search the car's passenger compartment, its trunk, under its hood, and then its interior again several times. By then, almost 15 minutes had passed since defendant had given his consent and still [the officer] had found nothing incriminating. At that point, if not sooner, the search should have ceased. A typically reasonable person would not have understood defendant's consent to a 'real quick' search to extend beyond that point, much less to include authorization

[2] Appellant also refers to an incident taking place after he voluntarily exited the vehicle, when Cardona says to appellant, "I saw the BB gun that you said is on the ground. I'm gonna make sure it's a BB gun, ok?" On the body camera footage, this appears to be more of a statement informing appellant of Cardona's next steps, rather than a request for consent to search the vehicle that appellant had already exited. In any event, as discussed above, appellant does not cite authority that, absent a withdrawal or revocation of his prior consent, any subsequent exchange could narrow the prior consent.

to unscrew the panel of a piece of equipment during a second search of the trunk while awaiting the arrival of a drug sniffing dog."].)[3]

DISPOSITION

The judgment is affirmed.

SIMONS, J.

We concur.

JACKSON, P. J.
CHOU, J.

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[3] Appellant also argues the search cannot be justified as an inventory search, a ground not found by the trial court and not argued by the People. We need not and do not address the claim.