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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

SEAN CONNERY ANDERSON,

Defendant and Appellant.

A130985

(Solano County  
Super. Ct. No. FCR274844)

A Vacaville police officer saw defendant Sean Anderson driving recklessly in a car that resembled a vehicle involved in a shooting earlier that night. When another officer stopped defendant, that officer detected the odor of marijuana and found defendant's conduct to be nervous and uncooperative. After some discussion, the officers conducted a patdown search of defendant for weapons, finding a cocaine-like substance in his pocket. Two firearms were found in a subsequent search of the car. Defendant contends the officer lacked reasonable suspicion to conduct the patdown search. We affirm.

**I. BACKGROUND**

Defendant was charged in an information filed June 14, 2010, with transportation of a controlled substance (Health & Saf. Code, § 11352, subd. (a)), possession for sale of a controlled substance (Health & Saf. Code, § 11351), carrying a loaded firearm in a vehicle (Pen. Code, former § 12031, subd. (a)(1)), reckless driving (Veh. Code, § 23103, subd. (a)), and permitting a loaded firearm in a vehicle (Pen. Code, former § 12034,

subd. (a)).<sup>1</sup> With respect to the two drug offenses, the information alleged defendant was personally armed with a firearm. (Pen. Code, § 12022, subd. (c).)

Following the denial of a motion to suppress evidence seized at the scene of his arrest, defendant pleaded no contest to the charge of transporting a controlled substance. The remaining charges and the enhancements were dismissed, and defendant was sentenced to 90 days in jail and three years of probation.

At defendant's preliminary hearing, Officer Stuart Tan of the Vacaville Police Department testified he was driving in an unmarked car when he noticed a dark-colored Mercedes car with tinted windows driving in excess of the posted speed limit. Tan watched as the Mercedes failed to stop at an intersection, narrowly avoiding a collision. At the next intersection, the Mercedes, now trailed by Tan, moved into a left-turn lane and stopped for the light. While stopped, the Mercedes "abruptly lunged forward" twice, moving through the cross-walk and into the intersection, despite the red light. When the straight-ahead light at the intersection changed to green ahead of the left-turn light, the Mercedes "darted" into one of the straight-ahead lanes and through the intersection. Stuck in the left-turn lane, Tan lost sight of the car and broadcast a request to fellow officers to watch for it.

Another Vacaville police officer, Detective Ryan Smith, received Tan's radio alert and noticed the car described by Tan pulling out of a gas station. When the Mercedes pulled into a parking lot and stopped, Smith followed. As the driver, defendant, left the car, Smith stopped him and explained the reason for his detention. As they spoke, Smith smelled the odor of marijuana on defendant's person and noticed two other occupants of the car open their doors and begin to step out. Smith asked them to get back in the car, and they complied. Because the windows of the car were tinted, however, Smith could not keep an eye on their activities. Smith asked defendant whether he would permit a search of his person for weapons and drugs, and defendant declined. While they spoke,

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<sup>1</sup> Three other defendants were also charged in the information. None is a party to this appeal.

Smith noticed defendant was “not able to keep eye contact with me, looking back and forth.” In addition, defendant “[p]laced [his hands] into his pockets . . . sometimes.” Smith ordered him to take his hands out.

After Tan and another officer arrived, Tan and Smith conferred. Smith told Tan he had smelled marijuana on defendant’s person. Tan sensed the odor, although faintly. Smith also mentioned there had been a report of shots fired an hour earlier at the intersection at which Tan first spotted the Mercedes. Smith told Tan the Mercedes “loosely fit” the description of a vehicle connected with the shooting.

Tan then engaged defendant in conversation, asking why he had been driving strangely and mentioning the shooting earlier that night. At some point, Tan asked defendant whether he had any weapons on his person or in the car. Defendant did not respond. Tan also asked defendant whether there was additional marijuana in the car. Again, there was no response.

At this point, Smith, conducted a patdown search of defendant. The search yielded \$580 in cash, a cell phone, and several small bags of a white powdery substance resembling cocaine.

Tan and the third officer then directed the remaining occupants of the Mercedes to get out. Searching the car, Tan found loaded, semi-automatic handguns on the front and back floors of the car. He also found two small bags of marijuana, a partially smoked marijuana cigarette, prescription medicine bottles holding an “orangish liquid,” and an eye-dropper.

Based on the foregoing evidence, the preliminary hearing magistrate denied defendant’s challenge to the lawfulness of the patdown search, explaining, “I would say based on the totality of the circumstances it was justified. First, there was the odor of marijuana. Second, there was the non-responsiveness to the questions about the presence of weapons. Third, this was on the heels of erratic driving leading to, well it could not be done in a rental car, a chase, and then BOL [a ‘be on the lookout’ issued] to other officers to look for and stop this vehicle. All those circumstances were known to the officer at the

time that the patsearch was conducted.” The trial court denied defendant’s renewed motion to suppress, relying upon the magistrate’s factual findings and reasoning.

## II. DISCUSSION

Defendant contends the patdown search was not justified by reasonable suspicion.

“The principles surrounding a patsearch are well settled. A limited, protective patsearch for weapons is permissible if the officer has ‘reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.’ [Citations.] ‘ . . . “The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence . . . .” ’ ” (*In re H.H.* (2009) 174 Cal.App.4th 653, 657; see similarly *People v. Celis* (2004) 33 Cal.4th 667, 677.) The determination of reasonable suspicion is based on the totality of the circumstances confronting the officer, who must be able to “ ‘point to specific and articulable facts which, taken together with rational inferences from those facts,’ would warrant the intrusion.” (*People v. Souza* (1994) 9 Cal.4th 224, 229–230.) That said, “ ‘[a]n action is “reasonable” under the Fourth Amendment, regardless of the individual officer’s state of mind, “as long as the circumstances, viewed *objectively*, justify [the] action.” [Citation.] The officer’s subjective motivation is irrelevant.’ ” (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 145.)

In reviewing the trial court’s denial of a motion to suppress, we uphold the factual findings of the magistrate if supported by substantial evidence and exercise our independent judgment in determining whether the search complied with constitutional standards. (*People v. Hughes* (2002) 27 Cal.4th 287, 327; *People v. Thompson* (1990) 221 Cal.App.3d 923, 940.)

We have no hesitation affirming the magistrate’s finding of reasonable suspicion to support the patdown search. In addition to the factors cited by the magistrate— the odor of marijuana, defendant’s nonresponsiveness to the officers’ questions, and his

reckless driving—there were additional circumstances creating a legitimate concern defendant might be armed. Defendant appeared to be uncomfortable; he would not look the officer directly in the eye and placed his hands in his pockets. Defendant was accompanied by three companions whom Smith could not watch, since the windows of the car were tinted. Finally, there had been a shooting in the same general area less than an hour earlier, and defendant’s car “loosely fit” the description of the car involved in the shooting. These circumstances taken together provided adequate grounds for Smith’s search.

Defendant’s arguments in favor of suppression fail because they seek to treat these various circumstances in isolation, rather than as a totality. Most notably, defendant argues “[t]he odor of marijuana was insufficient to justify the search” because the odor was slight and appeared to come from the car, making it impossible to determine whether defendant had been using the drug. If the odor of marijuana were the only factor leading the officers to be concerned for their safety, this argument might have some force. As noted above, however, defendant’s unusual pattern of reckless driving, suggesting he was agitated or in a hurry, his lack of responsiveness to the officer’s questions, his uncomfortable behavior, and his car’s resemblance to one that had been involved in a recent nearby shooting also supported a reasonable suspicion. The odor of marijuana was simply one factor the officer could rightfully consider in evaluating the totality of the circumstances. (E.g., *People v. Collier* (2008) 166 Cal.App.4th 1374, 1377, fn. 1.)

Similarly, defendant argues his failure to respond to the officers’ questions was insufficient to justify the patdown, citing *In re H.H.*, *supra*, 174 Cal.App.4th 653. *H.H.* concerned the refusal to consent to a search rather than the unresponsive conduct cited by the officers here. (*Id.* at pp. 658–659.) In any event, even if defendant’s failure to answer questions about drugs and firearms is disregarded, the other circumstances were sufficient to create reasonable suspicion, for the reasons discussed above.

Defendant also argues there was no evidence of a “chase,” since defendant was not aware he was being followed. The argument misses the point of the magistrate’s reasoning. The magistrate found that Smith had grounds for concern because the search

occurred “on the heels of erratic driving leading to . . . a chase, and then BOL to other officers to look for and stop this vehicle.” In other words, the magistrate reasoned that when Smith made the decision to patdown defendant, he was aware defendant’s driving had been sufficiently erratic for Tan to follow his car and issue a “BOL” for the vehicle when he lost sight of it. From Smith’s point of view, this provided reason to believe this was something more than an ordinary traffic stop. In this light, whether Tan’s pursuit of defendant can fairly be characterized as a “chase” is beside the point. In any event, the pursuit was not the only factor on which the magistrate relied.

Defendant argues the earlier shooting cannot be considered because the relevant testimony came from Tan, not Smith, and “[t]here was no testimony indicating that Smith knew about the first shooting when he searched [defendant].” This is simply incorrect. Tan’s testimony made clear he knew about the shooting only because Smith told him about it:

“Q. At the same time as this stop, was there another incident going on in the city, in that area?

“[Tan:] . . . . There was a shooting at the intersection where I first saw them earlier, probably an hour, 45 minutes, prior to this incident when there was [*sic*] reports of a shooting, subjects running away and a guy shooting at them at that intersection. . . . [¶] . . . Unfortunately the subjects that were detained, the black Mercedes, the vehicle loosely fit the description of that. *I did not have the information initially. But that’s what I learned when I was talking to Detective Smith with Mr. Anderson.*” (Italics added.)

Defendant also notes the shooting was not mentioned by the magistrate, but we are required to exercise our independent judgment in determining whether constitutional standards were met. (*People v. Hughes, supra*, 27 Cal.4th at p. 327.) “On appeal we consider the correctness of the trial court’s ruling *itself*, not the correctness of the trial court’s *reasons* for reaching its decision.” (*People v. Letner and Tobin, supra*, 50 Cal.4th at p. 145.) Substantial evidence supports a conclusion the shooting was a circumstance known to Smith and was relevant to his decision to search.

Finally, defendant argues in his reply brief that the officer’s “intrusion was not limited” to that necessary to discover weapons. Smith performed nothing more than a simple patdown search. It is not clear how Smith could have “limited” his search in any way yet still have ensured defendant was not armed, and defendant does not suggest any such limitation.

**III. DISPOSITION**

The trial court’s judgment is affirmed.

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Margulies, Acting P.J.

We concur:

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Dondero, J.

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Banke, J.