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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

PEDRO VALDOVINOS,

Defendant and Appellant.

A135143

(San Mateo County
Super. Ct. No. SC74561A)

After the court denied his motion to suppress evidence under Penal Code section 1538.5, defendant Pedro Valdovinos was convicted of felony possession of heroin with a previous conviction, falsely identifying himself to a police officer, and driving on a suspended license. This appeal challenges the ruling on the motion to suppress and the sufficiency of the evidence supporting the conviction for giving false identification to a police officer. We affirm.

BACKGROUND

Menlo Park Police Officer Josh Russell was driving west on Marsh Road around 8:00 p.m. on a September evening when he noticed a Dodge Durango stopped at a red traffic light at the Highway 101 overpass. The Durango was on an incline, but the center brake light was not illuminated. When the light turned green and the car pulled away, the tail lights on either side of the brake light did not dim. Officer Russell concluded the vehicle's brake lights were not functioning and that the Durango posed a hazard to other cars on the road.

Officer Russell activated his patrol car's overhead lights to effect a traffic stop. Instead of immediately yielding to the right, where there was ample space to pull over, the Durango went around the turnabout onto Highway 101. About 15 to 20 seconds after Russell activated his lights, the vehicle pulled over to the side of the road.

Officer Russell approached the driver, later identified as defendant, and explained the reason for the stop. Defendant said that his brake lights were working, but that he had not been depressing the brake pedal at the traffic light. He asked Officer Russell to check the brake lights because if he did so he would learn they were functioning.

Officer Russell asked defendant for his driver's license or identification. Defendant said he was Ricardo Torres and gave an August 2, 1975 date of birth. He said he did not have a driver's license because "he had entered the country illegally three years earlier." Officer Russell disbelieved him because defendant's English seemed too good for someone who had only been in the United States for three years. A DMV check by police dispatch disclosed that the name and birth date defendant supplied did not match any DMV records.

After Russell gave defendant's information to police dispatch, he went behind the Durango and had defendant step on the brake pedal to confirm whether the brake lights were working. They were. When he was asked at the preliminary hearing why he did not observe that the lights were working when he pulled the Durango over in front of his patrol car, Officer Russell explained that at that point he was focused on why defendant was taking so long to stop and whether his safety was at risk. "At that point, I was so focused on why he was clearly driving slowly, aware of my presence, and yet he didn't yield to the right where the[re] was plenty of space underneath the overpass; he didn't yield to the right at the onramp or traffic that was coming from eastbound Marsh Road onto 101. I was so focused on where this guy was going and what was taking so long to stop and then getting my lights adjusted and everything I just didn't see it." Officer Russell "was paying attention to other things that are very important when conducting a traffic [s]top, especially one that's taking so long to actually yield to the right."

After ascertaining that defendant had no identification in his wallet, Officer Russell asked whether he had anything illegal on him. Defendant said he did not, and consented when the officer then asked for permission to search him. Officer Russell searched defendant and found in his pants pocket a cellophane packet that contained a substance later stipulated to be 3.3 grams of heroin.

Defendant moved to suppress all evidence seized as a result of the traffic stop. The magistrate found that Officer Russell had a valid reason to stop the Durango and that, once having effected the lawful stop, was entitled to ask for defendant's license or identification. Defendant renewed the motion to suppress before the trial court, with the same result.

Defendant waived a jury and proceeded to a bench trial on charges of heroin possession, falsely identifying himself to a police officer, and driving on a suspended license. Officer Russell's testimony at trial was consistent with his testimony at the suppression hearing. Defendant was convicted of all three charged counts.

This appeal timely followed.

DISCUSSION

Where, as here, a motion to suppress is submitted to the superior court on the preliminary hearing transcript, "the appellate court disregards the findings of the superior court and reviews the determination of the magistrate who ruled on the motion to suppress, drawing all presumptions in favor of the factual determinations of the magistrate, upholding the magistrate's express or implied findings if they are supported by substantial evidence, and measuring the facts as found by the trier against the constitutional standard of reasonableness." (*People v. Thompson* (1990) 221 Cal.App.3d 923, 940.) We independently identify the applicable law and apply it to the established facts. (*People v. Carter* (2005) 36 Cal.4th 1114, 1140.)

A traffic stop is justified at its inception when an officer has a reasonable suspicion the driver has violated the Vehicle Code. (*People v. Bell* (1996) 43 Cal.App.4th 754, 761.) The facts here supported Officer Russell's reasonable suspicion that the Durango was being driven with brake lights that were not functioning in violation

of Vehicle Code section 24603. He testified that the Durango's center brake light was not illuminated while the car was stopped on an incline, and that the tail lights did not dim when the traffic light turned green and the Durango pulled away. Russell did not notice that defendant's tail lights went on when the Durango subsequently slowed and stopped in front of his police car because, he explained, he was focused on safely effecting the traffic stop, particularly since defendant did not immediately pull over. The magistrate found Officer Russell's testimony to be credible: "[W]e've heard the officer's testimony. And essentially, he said that he didn't notice the brake lights because of the situation because the car didn't yield and he was getting . . . more and more concerned about that. So when you kind of put that on top of the first issue, which was, was the equipment operating correctly; either the lights or the brakes or both; and then you put on top of that the fact that the defendant is not yielding in the timeframe that the officer assumes he will; I think that in fact gives the officer a reason to stop the vehicle." We agree that Officer Russell acted reasonably under the circumstances when he stopped the Durango and asked defendant for his license and identification.

Defendant contends that an officer's "mistake of law that a Vehicle Code section 24603, subdivision (b) violation occurred" does not provide objectively reasonable suspicion for a traffic stop. His contention is meritless. Reasonable suspicion of a Vehicle Code violation justifies a traffic stop. (*People v. Watkins* (2009) 170 Cal.App.4th 1403, 1408.) The magistrate's finding of reasonable suspicion is amply supported by Officer Russell's testimony that the Durango's center brake light was not illuminated when the vehicle was stopped on an incline and that the tail lights were "dimly illuminated consistent with taillights, but they appeared to be too dim for brake lights" and did not change when the vehicle proceeded through the green light. While this case involves a mistake of fact, not law as claimed by defendant, because the brake lights later turned out to be working, that mistake neither invalidated the stop nor the ensuing consensual search. "If the officer turns out to have been mistaken the mistake must be one which would have been made by a reasonable person acting on the facts known to the officer at the time of the stop. Under the foregoing test, a traffic stop will

not violate the Fourth Amendment if the officer making the stop reasonably suspects the violation of a traffic law even if later investigation dispels that suspicion.” (*People v. Rodriguez* (2006) 143 Cal.App.4th 1137, 1148-1149; see also *In re Raymond C.* (2008) 45 Cal.4th 303, 308 [officer is not required to eliminate all innocent explanations that might account for the facts supporting a particularized suspicion].) The magistrate found that Officer Russell’s suspicion of a traffic code violation was reasonable under the circumstances. We agree.

Defendant also argues there was insufficient evidence to prove he falsely identified himself to a police officer in violation of Penal Code section 148.9, subdivision (a). His argument is premised entirely on his assertion that Officer Russell was not lawfully performing his duties as a peace officer when he requested defendant’s identification because he lacked a reasonable suspicion that the Durango’s brake lights were not working. (See *People v. Simons* (1996) 42 Cal.App.4th 1100, 1109 [defendant cannot be convicted of an offense against an officer engaged in the performance of official duties unless the officer was acting lawfully at the time].) This argument is no more persuasive in this context than in the context of the suppression motion. Officer Russell testified at trial, as he did at the suppression hearing, that he did not notice whether or not the Durango’s brake lights were working while he was pulling it over because at that point his focus had shifted to safety, “[d]ue to the amount of time that it had taken from the time I activated my emergency lights and equipment to the time the driver yielded, and the fact that he passed several locations that I thought were better suited for a traffic stop.” The trial court reasonably credited the officer’s testimony, and as a reviewing court, we are not at liberty to reevaluate it.

DISPOSITION

The judgment is affirmed.

Siggins, J.

We concur:

Pollak, Acting P. J.

Jenkins, J.