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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE PAUL WILSON,

Defendant and Appellant.

A138852

(Sonoma County  
Super. Ct. No. SCR624123)

**I.**

After pleading no contest to transportation of marijuana (Health & Saf. Code, § 11360, subd. (a)), appellant appeals from the denial of his preconviction motion to suppress evidence (Pen. Code, § 1538.5, subd. (m)). He contends the trial court erred in concluding that the police officer who conducted a traffic stop had reasonable suspicion to stop appellant’s vehicle, which then led to the discovery of marijuana in the vehicle. We disagree, and affirm the ruling and resulting conviction.

**II.**

A felony complaint was filed by the Sonoma County District Attorney charging appellant with one count of transportation of marijuana (Health & Saf. Code, § 11360, subd. (a)), and one count of possession of marijuana for sale (Health & Saf. Code, § 11359). Appellant subsequently pleaded not guilty to the charges.

Thereafter, appellant filed a motion to suppress evidence under Penal Code section 1538.5. Appellant’s trial counsel made clear at the inception of the hearing on the motion to suppress that the scope of the hearing challenged the traffic stop itself: “If the

Court finds that the stop is lawful, essentially, the dominoes fall in that direction.” The motion was opposed by the prosecution, and a hearing on the motion was set for the same day as that set for the preliminary hearing. Appellant then waived the preliminary hearing, withdrew his motion to suppress evidence, stipulated that the complaint could serve as a felony information, and entered pleas of not guilty to both counts.

The motion to suppress was renewed and heard on March 28, 2013. After hearing testimony from the witnesses and argument from counsel, the trial court denied the motion.

On April 10, 2013, appellant and the prosecution arrived at a negotiated disposition. Appellant agreed to plead no contest to the transportation of marijuana (Health & Saf. Code, § 11360, subd. (a)), in return for which the prosecution agreed to dismiss the second count and to a grant of probation. The plea was accepted by the court after appellant voluntarily and knowingly waived his constitutional rights in agreeing to the plea disposition, and the matter was set for sentencing on May 17, 2013.

At sentencing the trial court granted appellant formal probation with conditions as stated on the record. This appeal was filed from the earlier denial of appellant’s motion to suppress.

### **III.**

#### **A.**

Two witnesses were called to testify during the hearing on appellant’s motion to suppress evidence—Sonoma County Deputy Sheriff Sean Jones, who stopped and subsequently arrested appellant, and appellant’s then girlfriend, Erica Heintz, who was driving a separate vehicle nearby at the time of the traffic stop.

Deputy Jones testified that he conducted a traffic stop at approximately 4:30 p.m. on September 13, 2012, on Highway 101 near Healdsburg. Appellant’s Audi was stopped because it had a defective front windshield and the vehicle had made an unsafe lane change in the officer’s presence.

Specifically, Deputy Jones was travelling behind the Audi when he saw it move from the number one lane into the number two lane “cutting off a gray SUV.” The

movement caused the SUV to apply its brakes “rapidly.” He also noticed at the same time that the Audi had a cracked windshield. At the time of the lane change, Deputy Jones estimated that the SUV was about two car lengths behind the Audi when it applied its brakes. The crack in the windshield started at the lower portion of the driver’s side and ran up about one-third to halfway to the top of the windshield. After seeing the lane change and observing the cracked windshield, Jones initiated a traffic stop.

As he approached appellant’s Audi, Deputy Jones detected the odor of marijuana in the vehicle. He asked appellant about the odor and was told that appellant had approximately seven pounds of marijuana in the trunk that he was delivering to a dispensary in Vallejo to sell. Jones asked appellant if he had a medical marijuana card and appellant said he did not.

Deputy Jones took a photograph of the windshield crack, which was admitted into evidence as Exhibit 1.<sup>1</sup> Deputy Jones testified that he believed the cracked windshield violated Vehicle Code section 26710 because it would impair the driver’s view. The windshield crack ran up right in front of the driver’s field of vision. Deputy Jones could not recall if he first noticed the cracked windshield when he was directly behind the Audi or as it moved into the number two lane in front of the SUV.

Deputy Jones also believed that the lane change he observed violated Vehicle Code section 21658, subdivision (a), as an unsafe lane change. At the time of the lane change, Jones estimated that he was about five or six car lengths behind the Audi, and traffic was flowing at about 65 miles per hour. He believed the SUV hit its brakes in response to the Audi’s lane change because the two events happened simultaneously.

Erica Heintz testified that she was in a dating relationship with appellant on the day of the vehicle stop. She had plans to meet appellant for lunch in Rohnert Park and was driving there in her silver Toyota Highlander SUV. Her vehicle was in front of appellant’s Audi. The Audi went into the right lane to pass Ms. Heintz. Once appellant passed Ms. Heintz, the sheriff’s patrol car pulled up behind him quickly. It looked as

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<sup>1</sup> The exhibit is not in the record on appeal.

though the police vehicle was in pursuit of someone and it pulled in behind appellant's Audi at a speed and distance Ms. Heintz thought was unsafe. Also on the road was a blue minivan. The Audi passed the van and the patrol car pulled up parallel to the Audi, travelling alongside it for a few minutes. Ms. Heintz does not recall the blue van having to apply its brakes as appellant moved into its lane, and there seemed to be adequate space for the lane change to have been made without causing an accident.

Ms. Heintz knew about the crack in the Audi windshield which she described as "small" and "below the sight of vision." She looked at Exhibit 1 and stated that it did not look like the crack in the Audi windshield, and that defense Exhibit C more accurately depicted the crack.<sup>2</sup> She described the crack as starting at the bottom of the windshield and extending up about four inches.

Ms. Heintz had known appellant much of her life and the two had dated for about a month as teenagers, had no contact for a decade, and had been dating for about six months prior to the traffic stop in Healdsburg. She admitted she wanted the charges against him to be dismissed because she was convinced that appellant wanted to better his life and to take "a different path."

At the conclusion of the testimony, counsel argued their respective positions. The matter was then submitted. The court indicated that it did not think defense counsel's description of Ms. Heintz as an independent, neutral, third party was accurate. The court's decision came down to whether it believed Ms. Heintz or Deputy Jones. In considering the evidence, the court concluded that a police officer could have a reasonable suspicion to believe that the "enumerated traffic violations" had taken place. Accordingly, the motion to suppress was denied.

## **B.**

"The standards for appellate review of the trial court's determination on a motion to suppress . . . are well settled. The trial court's factual determinations are reviewed under the deferential substantial evidence standard; its determination of the applicable

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<sup>2</sup> Although Exhibit C was admitted into evidence, it is not part of the record on appeal.

rule of law is scrutinized under the standard of independent review. [Citation.] We independently assess as a question of law whether, under such facts as found by the trial court, the challenged action by the police was constitutional. [Citation.]’ . . .” (*People v. Lindsey* (2007) 148 Cal.App.4th 1390, 1395, citing *People v. Coulombe* (2000) 86 Cal.App.4th 52, 55-56.)

“ ‘As the finder of fact . . . the superior court is vested with the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences in deciding whether a search is constitutionally unreasonable.’ [Citation.] We review its factual findings ‘ ‘ ‘under the deferential substantial-evidence standard.’ ” ’ [Citation.] Accordingly, ‘[w]e view the evidence in a light most favorable to the order denying the motion to suppress’ [citation], and ‘[a]ny conflicts in the evidence are resolved in favor of the superior court ruling’ [citation]. Moreover, the reviewing court ‘must accept the trial court’s resolution of disputed facts and its assessment of credibility.’ [Citation.]” (*People v. Tully* (2012) 54 Cal.4th 952, 979.)

A detention is reasonable under the Fourth Amendment “when the detaining officer can point to specific facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.” (*People v. Souza* (1994) 9 Cal.4th 224, 231 (*Souza*)). A police officer may “stop and detain a motorist on reasonable suspicion that the driver has violated the law. [Citations.]” (*People v. Wells* (2006) 38 Cal.4th 1078, 1082-1083.)

The standard of reasonable suspicion is less demanding than that of probable cause; “no stop or detention is permissible when the circumstances are not reasonably ‘consistent with criminal activity’ and the investigation is therefore based on mere curiosity, rumor, or hunch.” (*In re Tony C.* (1978) 21 Cal.3d 888, 894, superseded on other grounds by Cal. Const., art. I, § 28.) Even if an innocent explanation of the circumstances is possible, police may nevertheless have reasonable suspicion. (*In re Tony C.*, *supra*, at p. 894.)

Deputy Jones and Ms. Heintz presented divergent narratives of what occurred leading up to the traffic stop of appellant's Audi on the afternoon in question. While the court observed Deputy Jones could not recall a number of details leading up to the stop, some of which the court felt were "troubling," the court chose to believe Deputy Jones's version over that offered by Ms. Heintz, who freely admitted that she was dating appellant and wanted to see the charges against him dismissed. We are not empowered to challenge the trial court's judgment as to which witness to believe. (*People v. Martin* (1973) 9 Cal.3d 687, 692 [all factual conflicts must be resolved in the manner most favorable to the trial court's disposition]; *People v. Lewis* (1982) 133 Cal.App.3d 317, 323.)

Vehicle Code section 26710 provides in relevant part: "It is unlawful to operate any motor vehicle upon a highway when the windshield or rear window is in such a defective condition as to impair the driver's vision either to the front or rear." The windshield crack started at the lower portion of the driver's side and ran up about one-third to halfway to the top of the windshield.

As the trial court correctly observed, the question is not whether the crack *actually* impaired appellant's vision because that conclusion depends on non-observable factors such as where a driver is looking at any particular time, or how the seat is adjusted, but whether a police officer could have a reasonable suspicion that the driver's vision could be impaired by the defect. Deputy Jones described a windshield crack he observed that was extensive enough to support a reasonable conclusion that it impaired the vision of the driver.

"Reasonable suspicion cannot be reduced to a neat set of legal rules, but must be determined by looking to 'the totality of the circumstances—the whole picture.' . . ." (*U.S. v. Jordan* (5th Cir. 2000) 232 F.3d 447, 449, quoting *United States v. Sokolow* (1989) 490 U.S. 1, 7-8.) Under this standard, a detention requires only a "minimal level of objective justification" (*Illinois v. Wardlow* (2000) 528 U.S. 119, 123), and an officer may initiate one "based not on certainty, but on the need to 'check out' a reasonable suspicion" (*U.S. v. Clark* (D.C. Cir. 1994) 24 F.3d 299, 303). Moreover, "we 'judge the

officer’s conduct in light of common sense and ordinary human experience,’ [citation], and we accord deference to an officer’s ability to distinguish between innocent and suspicious actions. [Citation.]” (*U.S. v. Williams* (10th Cir. 2001) 271 F.3d 1262, 1268.) “[W]hen circumstances are ‘ “consistent with criminal activity,” they permit—even demand—an investigation. . . .’ [Citation.] A different result is not warranted merely because circumstances known to an officer may also be ‘ “consistent with lawful activity.” ’ [Citation.] . . . ‘The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the principal function of [police] investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal. . . .’ [Citation.]” (*Souza, supra*, 9 Cal.4th at pp. 229, 233.)

Alternatively, Deputy Jones observed what appeared to be an unsafe lane change by appellant. Vehicle Code section 21658, subdivision (a) provides in relevant part: “A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from the lane until such movement can be made with reasonable safety.” The deputy concluded that there was reason to believe that this statute also was violated because, while traveling at speeds approximating 65 miles per hour, the Audi “cut off” a gray SUV by entering its lane of travel within two car lengths of the SUV’s front, causing the SUV’s driver simultaneously to brake “rapidly.”

These facts independently support a reasonable suspicion that “criminal activity is afoot and that the person to be stopped is engaged in that activity. [Citations.]” (*Souza, supra*, 9 Cal.4th at p. 230.)

In both respects, the court’s conclusion that the traffic stop did not violate appellant’s constitutional rights was supported by substantial evidence. Accordingly, we affirm the order denying appellant motion to suppress evidence, and his resultant conviction.

**IV.**  
**DISPOSITION**

The judgment of conviction is affirmed.

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RUVOLO, P. J.

We concur:

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RIVERA, J.

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HUMES, J.