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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

THE PEOPLE,  
Plaintiff and Respondent,  
v.  
KEVIN D. PEOPLES,  
Defendant and Appellant.

A138934  
(San Mateo County  
Super. Ct. No. SC077634A)

**I. INTRODUCTION**

After pleading no contest to one count of receiving stolen property, appellant was sentenced to a three-year prison term but that term was suspended and he was placed on probation, subject to terms he accepted. Per his brief to us, he appeals from that conviction pursuant to *People v. Wende* (1979) 25 Cal.3d 436. However, his actual appeal is from an order of the trial court denying his pre-plea motion to suppress evidence taken from his person and a bag he was carrying. Such an appeal is specifically authorized by Penal Code section 1538.5, subdivision (m), and California Rules of Court, rule 8.304(b)(4)(A). We have reviewed the record and the law regarding appellant's motion to suppress and affirm the trial court's order.

**II. FACTUAL AND PROCEDURAL BACKGROUND**

In the early afternoon of February 8, 2013,<sup>1</sup> South San Francisco Police Officer Jason Castro was on patrol, specifically in a "vacant parking lot" between an "unoccupied

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<sup>1</sup> All further dates noted are in 2013.

old theatre and Golf Mart Shopping Center,” an area he identified as having had a lot of criminal activity. At that time, he saw a man, later identified as appellant, emerge from the rear of the Golf Mart store “into the vacant parking lot . . . holding on to a black garbage bag” which had no markings on it. While appellant was walking by Castro and his police car, he appeared to be “avoiding eye contact” with Castro. Castro followed appellant in his patrol car, pulled up “alongside of him,” and “greeted him with a conversational tone.” Appellant greeted Castro in return. Castro asked appellant if he worked in the area, and appellant responded that he worked at an auto body shop in San Bruno. Castro asked him where he was going, and appellant responded that he was going to his home in South San Francisco. Castro asked him if he had any identification on him, and appellant pulled an identification card out of his pocket, and handed it to Castro, who had stepped out of his vehicle. Appellant then asked Castro “if there was a problem” and Castro responded by telling him that “there’s occurrences of criminal activity in that area to the rear of 410-470 Noor [and] then I immediately asked him if he was on parole.” Appellant responded in the affirmative; Castro testified that appellant was free to leave until he had told the officer that he was on parole.

Castro then searched both appellant and the bag he was carrying. In appellant’s front pants pocket, the officer found a “paper bindle” containing what he believed to be marijuana. In the large unmarked plastic bag appellant had been carrying, Castro found several bottles of liquor, a can of beer, and a few other beverage and food items, which were later identified as having been taken from a nearby Safeway store.

On March 8, the San Mateo County District Attorney filed an information charging appellant with one felony count of receiving stolen property. (Pen. Code, § 496, subd. (a).) That information also alleged that appellant had four prior felony convictions, which rendered him ineligible for probation, plus three prior prison term enhancements and two prior serious or violent felony convictions within the meaning of the Three Strikes law. (Pen. Code, § 1170.12, subd. (c)(1).)

On March 19, appellant filed a motion to suppress the evidence taken from him, which the prosecution opposed.

On April 4, the court held a hearing on that motion, and denied it.

On April 15, appellant entered a no contest plea to the receiving stolen property count, albeit with the understanding that he would be placed on probation for three years and receive credit for the time he had served in jail as a condition of that probation. Appellant waived his *Boykin/Tahl*<sup>2</sup> rights and stipulated to the use of the preliminary hearing transcript as a factual basis for his plea. He also stipulated to immediate sentencing, and the court imposed the negotiated sentence. Consistent with the negotiated sentence, appellant was placed on probation for three years with various standard conditions of probation; the court dismissed the balance of the charges in the information.

On June 13, appellant filed a timely notice of appeal from the trial court's earlier denial of his motion to suppress evidence under Penal Code section 1538.5

### III. DISCUSSION

In accordance with the procedures outlined in *People v. Wende, supra*, 25 Cal.3d 436, and *Anders v. California* (1967) 386 U.S. 738, 744, we conclude there are no meritorious issues to be argued on appeal.

The trial court found that “this was not a detention, that it was a properly consensual encounter up to the point where the parole status became known.” As reflected in our factual summary, appellant's parole status became known to officer Castro almost immediately after appellant produced his identification. “[T]he Fourth Amendment is not implicated when a police officer asks to see an individual's identification card.” (*People v. Leath* (2013) 217 Cal.App.4th 344, 353 (*Leath*)). However, there is authority that, once a defendant has complied with an officer's request “and submitted his identification card to the officers, a reasonable person would not have felt free to leave.” (*People v. Castenada* (1995) 35 Cal.App.4th 1222, 1227.)

Therefore, for purposes of this appeal, we assume that a detention occurred when Officer Castro accepted appellant's identification from him. The Fourth Amendment

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<sup>2</sup> *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

“prohibits seizures of persons, including brief investigative stops, when they are ‘unreasonable.’ [Citations.]” (*People v. Souza* (1994) 9 Cal.4th 224, 229.) “ ‘ “[I]n order to justify an investigative stop or detention the circumstances known or apparent to the officer must include specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity.” [Citation.] In determining the lawfulness of a temporary detention, courts look at the “ ‘totality of the circumstance’ of each case to see whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing.” [Citations.]’ [Citation.] Further, “ “[law enforcement] officers [may] draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to [him or her] that “might well elude an untrained person.’ ” ’ [Citation.]” (*Leath, supra*, 217 Cal.App.4th at p. 354.)

In the present case, undisputed evidence establishes that the following circumstances occurred before Officer Castro accepted appellant’s identification card: The officer observed appellant emerge from the rear of a Golf Mart store into a vacant parking lot which was a high crime area. Appellant was carrying a black garbage bag; the bag did not have any markings on it to indicate it had come from a store in the area. When appellant saw the officer, he avoided making eye contact. After the officer and appellant exchanged “conversational” greetings, appellant acknowledged that he did not work at or near the Golf Mart Shopping Center.

Were we to analyze any one of these circumstances in isolation, a question might arise about the propriety of a detention. (See, e.g., *People v. Perrusquia* (2007) 150 Cal.App.4th 228, 233 [“Reasonable suspicion . . . cannot be based solely on factors unrelated to the defendant, such as criminal activity in the area”].) However, the totality of these circumstances gave rise to a reasonable suspicion that appellant had committed a crime and justified Officer Castro’s further investigation, which led not only to his acceptance of appellant’s proffered identification card but also to appellant’s admission that he was on parole.

Finally, and in response to the only other applicable issue raised in appellant's *Wende* brief—raised “in accordance with the procedures outlined” in both *People v. Wende* and *Anders v. California, supra*, 386 U.S. at page 744—i.e., whether there was any problem regarding Castro's search of appellant and the bag he was carrying because the evidence “did not establish that the officer knew appellant's parole terms included a search condition,” that question is answered by a statement in *People v. Middleton* (2005) 131 Cal.App.4th 732, 739: “A search condition for every parolee is now expressly required by statute.” (See also *People v. Smith* (2009) 172 Cal.App.4th 1354, 1360, and *People v. Hunter* (2006) 140 Cal.App.4th 1147, 1152-1153.) The same is still true, as the 2012 amendments to the relevant statute make quite clear. (See Pen. Code, § 3067, subd. (a), (b)(3).)

#### IV. DISPOSITION

Both the order denying appellant's motion to suppress and the judgment are affirmed.

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Haerle, J.

We concur:

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Kline, P.J.

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Brick, J.\*

\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.