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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.

LORENZO ROMERO MEDRANO, JR.,

Defendant and Appellant.

A139186

(Mendocino County Super. Ct. No.
SCUKCR1223030002)

Defendant Lorenzo Romero Medrano, Jr. pleaded guilty to a charge of transporting marijuana and admitted that he served a prior prison term for transporting a controlled substance. On appeal, he contends the trial court erred in denying his motion to suppress evidence. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Because Medrano’s sole contention on appeal challenges the denial of his suppression motion, we derive the relevant facts primarily from the hearing on that motion.

At about 11:20 p.m. on July 20, 2012, Mendocino County Sheriff’s Deputies Jason Cox and Luis Espinoza were in a marked patrol car that was parked along Highway 101. Also in the patrol car was a police dog trained to detect narcotics, including marijuana. The deputies were parked at that location because it was near an event called “Reggae on the River.” Deputy Cox parked the patrol car so that it was facing the highway with its headlights illuminating the road.

A Honda Accord on Highway 101 driven by Medrano passed through the patrol car's headlights. Both deputies immediately recognized that the Honda's front passenger-side window was "illegally tinted" because it was too dark from "too much material applied to the window." The tinting prevented the deputies from seeing inside the vehicle and did not even allow them to see how many people were inside the Honda. They could also not see whether the driver was wearing a seat belt.

Deputy Cox began following the Honda. He pulled alongside the Honda and confirmed that the windows were tinted. Deputy Cox left the highway but immediately returned to the highway and resumed following the Honda.

The deputies initiated a traffic stop of the Honda. Deputy Espinoza testified that the purpose of the stop was two-fold—because the vehicle had illegally tinted windows and because the tinting prevented the deputies from determining whether the driver was wearing a seatbelt. On cross-examination, Medrano's counsel questioned Deputy Espinoza as to what degree of window tinting violates California law. The deputy responded, "I can't answer exactly to the Vehicle Code. I'd have to review the Vehicle Code to give you the exact definition." When asked what determination had been made that the tinted windows violated the Vehicle Code, Deputy Espinoza answered, "I was unable to see inside the vehicle. No light was emitting." The deputy confirmed that Medrano was never cited for driving with illegally tinted windows.

Deputy Cox remained by the patrol car with his police dog. Deputy Espinoza approached the Honda and spoke to Medrano, the vehicle's driver. Medrano was not the Honda's registered owner. Medrano told Deputy Espinoza that he was on a long road trip. However, Deputy Espinoza saw nothing in Medrano's car to suggest he was on a long trip, causing the deputy "additional investigative concern." The deputies knew that Medrano was from Southern California and was heading back from a "known drug growing area." Deputy Espinoza suggested that Deputy Cox walk his police dog around the Honda.

Deputy Cox asked Medrano if he had any medical marijuana with him and then walked the dog around the Honda. The dog alerted the deputy to the rear trunk area by

jumping at the vehicle and scratching it. Deputy Cox testified that the reaction indicated the dog had smelled one of the narcotics he was trained to smell, including marijuana. The deputies searched the trunk of the Honda and found several pounds of marijuana.

On December 13, 2012, the Mendocino County District Attorney filed a one-count felony information charging Medrano with transporting marijuana in violation of Health and Safety Code section 11360, subdivision (a). The information also contained a special allegation that Medrano had served a prior prison term within the meaning of Penal Code section 667.5, subdivision (b) as a result of a conviction for transporting a controlled substance.

In March 2013, Medrano filed a motion to suppress evidence pursuant to Penal Code section 1538.5. Medrano contended that the deputies who conducted the traffic stop did not have reasonable suspicion to believe he had committed a Vehicle Code violation. Specifically, he argued that the deputies could not justify the stop based on a claim the vehicle's windows were illegally tinted because no attempt had been made to determine whether any tinting was legal or illegal. Medrano also asserted that the deputies' inability to determine whether he was wearing a seatbelt did not justify the stop.

The court held a hearing on the suppression motion on March 28, 2013. Medrano offered testimony as to three photographs of the Honda taken by his attorney that purportedly showed there was no tinting on the front side windows of the vehicle. On cross-examination, Medrano acknowledged that the three photographs were taken in January 2013, roughly six months following the traffic stop. He did not recall if he had any photographs of the Honda that were taken at or around the time of the traffic stop in July 2012.

The trial court denied the motion to suppress. The court stated that if the only issue was whether the deputies were unable to determine whether Medrano had been wearing a seatbelt, it would grant the motion to suppress. However, the court observed that there is a specific Vehicle Code section involving material obstructing the driver's view. The court noted that the deputies could not see through the side window and that Officer Cox had aligned the patrol car with the Honda in order to confirm that the

window's tinting violated the Vehicle Code. The court discounted the probative value of the photographs purporting to show that the Honda's front windows were not tinted, reasoning that the tinting could have been changed in the six months since the traffic stop.

Following the denial of his suppression motion, Medrano pleaded guilty as charged in exchange for a promise that he would be placed on probation. Pursuant to the plea agreement, the court suspended imposition of sentence and placed Medrano on probation subject to various terms and conditions, including that he serve 120 days in jail. Medrano filed a timely notice of appeal, which identified the denial of his motion to suppress evidence as the basis for the appeal.

DISCUSSION

Medrano contends the traffic stop was unlawful because it was not supported by a reasonable suspicion that he had violated the Vehicle Code by driving a vehicle with illegally tinted windows. Medrano argues that the Vehicle Code prohibits tinted windows only if they obstruct the *driver's view* through the windshield or the side windows. The essence of his claim on appeal is that the deputies "had no idea whether the view through the driver's window (or any other window) from inside the car was obstructed even in the slightest" because the deputies' only observations were from outside the vehicle looking in. He consequently argues there was no objective basis for concluding that the driver's view was obstructed by any window tinting. We reject his contention for reasons we explain below.

Our review of the trial court's suppression ruling is governed by well settled principles. "[W]e view the record in the light most favorable to the trial court's ruling, deferring to those express or implied findings of fact supported by substantial evidence." (*People v. Jenkins* (2000) 22 Cal.4th 900, 969.) We exercise "independent judgment in determining the legality of a search on the facts so found." (*People v. Woods* (1999) 21 Cal.4th 668, 673–674.)

A temporary detention during a traffic stop constitutes a "seizure" within the meaning of the Fourth Amendment. (*Whren v. United States* (1996) 517 U.S. 806, 809–

810.) “An automobile stop is thus subject to the constitutional imperative that it not be ‘unreasonable’ under the circumstances.” (*Id.* at p. 810.) “A traffic stop is lawful at its inception if it is based on a reasonable suspicion that *any* traffic violation has occurred, even if it is ultimately determined that no violation did occur.” (*Brierton v. Department of Motor Vehicles* (2005) 130 Cal.App.4th 499, 510; see also *People v. Watkins* (2009) 170 Cal.App.4th 1403, 1408 [reasonable suspicion of a Vehicle Code violation is sufficient to justify traffic stop].)

In this case, Medrano claims the traffic stop was premised upon an incorrect understanding of California law governing window tinting. He claims the majority of published cases interpreting the language of the relevant statutes on window tinting demonstrate that the law addresses hindrances to the driver’s ability to see outside the vehicle from inside. According to Medrano, the law does not purport to forbid tinting that simply prevents someone from seeing inside the vehicle from the outside. We disagree.

Medrano’s argument is based upon a misreading of the statutory scheme. The statutes that are relevant to our inquiry are Vehicle Code sections 26708 and 26708.5.¹ Section 26708, subdivision (a)(1) provides that “[a] person shall not drive any motor vehicle with any object or material placed, displayed, installed, affixed, or applied upon the windshield or side or rear windows.” Subdivision (b) of section 26708 provides that the statute does not apply to, among other things, side windows behind the driver. (*Id.*, subd. (b)(4).) In addition, transparent material may be applied to the front side windows on either side of the driver if it “has a minimum visible light transmittance of 88 percent” and meets other standards set forth in the statute. (*Id.*, subd. (d)(1).) Section 26708.5 in general prohibits applying any transparent material to the windshield or the side or rear windows except as provided in section 26708. Thus, section 26708 prohibits *driving* with prohibited materials applied to the windows, whereas section 26708.5 prohibits the

¹All further statutory references are to the Vehicle Code.

application of the prohibited materials to the vehicle’s windows. (See *People v. Niebauer* (1989) 214 Cal.App.3d 1278, 1289.)

Neither subdivision (a)(1) of section 26708 nor section 26708.5 contain any reference to obstructing the driver’s view. Further, in setting forth the degree of tinting on front side windows that is considered acceptable in subdivision (d)(1) of section 26708, the statute does not specify that light transmittance is measured only from the perspective of the driver or from inside the vehicle. Consequently, a plain reading of the statutory scheme suggests that it is unlawful to apply excessive tinting to front side windows as viewed from *outside* the vehicle.

Medrano relies upon subdivision (a)(2) of section 26708, which provides that “[a] person shall not drive any motor vehicle with any object or material placed, displayed, installed, affixed, or applied in or upon the vehicle that *obstructs or reduces the driver’s clear view* through the windshield or side windows.” (Italics added.) That subpart is not relevant to our analysis. Subdivision (a)(2) of section 26708 does not refer specifically to material that is applied to the windows, as in subdivision (a)(1) of section 26708, but instead refers more generally to any object or material in the vehicle that obstructs the driver’s clear view. Thus, section 26708 sets forth two distinct violations—(1) driving with prohibited material applied to the windows (§ 26708, subd. (a)(1)), and (2) driving with any object or material in the vehicle that obstructs the driver’s clear view (§ 26708, subd. (a)(1)). Subdivision (a)(1) of section 26708—which is the relevant provision here—does not require a showing that the driver’s clear view is obstructed. Medrano utterly fails to mention subdivision (a)(1) of section 26708 and instead focuses on subdivision (a)(2). If we were to accept Medrano’s view that window tinting is unlawful only if it obstructs the driver’s clear view, we would effectively render subdivision (a)(1) of section 26708 superfluous, because any violation of subdivision (a)(1) for unlawful window tinting would necessarily also be a violation of subdivision (a)(2) for obstructing the driver’s view. Therefore, we reject Medrano’s contention that window tinting is unlawful only if it can be demonstrated that the driver’s clear view is obstructed.

The legislative history of section 26708 supports the view that the statute serves the purpose of driver safety as well as the safety of law enforcement officers who may have to approach vehicles with darkened windows. (See *People v. Niebauer*, *supra*, 214 Cal.App.3d at p. 1290, fn. 7.) “[O]fficer safety was, and is, one of the prime factors for enacting and amending the statutory scheme for regulating vehicle window tinting.” (*Ibid.*) A traffic stop presents a potential for danger to the officer. Darkened side windows enhance the danger to an officer who cannot see inside a vehicle. Thus, while one of the goals of the statute is to prohibit driving when the driver’s view is obstructed, another important goal is to allow law enforcement officers to see into the vehicle in order to promote officer safety.

A line of case law establishes that darkly tinted windows may serve as the basis for a traffic stop. In *People v. Carter* (2010) 182 Cal.App.4th 522, 529, the court stated: “When a police officer sees a vehicle with tinted front and side windows, the officer may stop the car and cite the driver for a violation of Vehicle Code section 26708, subdivision (a).” In *People v. Hanes* (1997) 60 Cal.App.4th Supp. 6, the court upheld the legality of a traffic stop premised on the officer’s observation that a vehicle had tinted windows. There, the detained vehicle passed directly in front of the officer at night, with “[t]he [window] tinting . . . so dark as to appear black and prevent the officer from seeing the occupants of the front seats.” (*Id.* at p. 10.) Likewise, in *People v. Roberts* (2010) 184 Cal.App.4th 1149, 1190–1191, the court concluded there was probable cause to stop a vehicle suspected of having illegally tinted windows on the basis of the officer’s observation that he could not see through the driver’s tinted side window as the officer drove alongside the detained vehicle.

Medrano asserts that the decision in *People v. Butler* (1988) 202 Cal.App.3d 602 “points the way to the correct outcome in this case, because it had similar facts and correctly interpreted the Vehicle Code.” We are not persuaded that *Butler* aids Medrano’s cause. In *Butler*, the officer based the traffic stop on his observation that the side and rear windows were “darkened” to the point of being “ ‘an obvious Vehicle Code violation.’ ” (*Id.* at pp. 604–605.) The officer also said he “ ‘didn’t like the idea of the

tinted windows.’ ” (*Id.* at p. 605.) The Court of Appeal found this record insufficient to support a reasonable suspicion that the tinting was illegal, noting that the officer had observed the vehicle from a distance late at night as he drove by a liquor store and, again, as the vehicle sped by the officer. (*Id.* at p. 606.)

Here, unlike in *Butler*, there was more than just a bare assertion that the detained vehicle had tinted windows based upon a distant or momentary observation. (See *People v. Nieubauer, supra*, 214 Cal.App.3d at p. 1293, fn. 10.) The evidence showed that the Honda passed through the patrol car’s headlights, affording the deputies a clear view of the darkly tinted front passenger window. Deputy Cox then drove next to the Honda to verify that the window was darkly tinted. The tinting was so dark that it did not permit the deputies to see inside the vehicle or determine how many people were in the car. Under the circumstances, the evidence was sufficient to support a reasonable suspicion that the tinted front passenger window on the Honda violated section 26708, subdivision (a)(1). Accordingly, the trial court properly denied the motion to suppress.²

DISPOSITION

The judgment is affirmed.

McGuiness, P.J.

We concur:

Pollak, J.

Jenkins, J.

²Because we reject Medrano’s challenge to the traffic stop, it is unnecessary to consider his claim that the erroneous denial of his suppression motion allows him to withdraw his plea.