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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Appellant,

v.

DAVID ALI MOKHTARI,

Defendant and Respondent.

A140998

(San Mateo County  
Super. Ct. No. NF418801A)

Police officers, who were looking for David Mokhtari to investigate his involvement in drug sales, performed a traffic stop of the vehicle he was driving because it had no license plates. Pursuant to the traffic stop, the police discovered drugs and evidence connecting Mokhtari with drug sales. The People filed a complaint charging him with possession for sale of four different drugs, but, after granting Mokhtari's motion to suppress evidence, the trial court dismissed the charges. The People now appeal, arguing that the trial court granted the suppression motion in error. We agree and reverse.

**BACKGROUND**

***I. Procedural Background***

On December 1, 2012, the People filed a complaint charging Mokhtari with possession for sale of cocaine (Health & Saf. Code, § 11351), possession for sale of oxycodone (*id.*, § 11351), possession for sale of alprazolam (*id.*, § 11375, subd. (b)(1)), possession for sale of diazepam (*id.*, § 11375, subd. (b)(1)), and being under the influence of cocaine (*id.*, § 11550, subd. (a)).

At the preliminary hearing on March 20, 2013, Mokhtari moved to suppress evidence pursuant to Penal Code section 1538.5. The court granted the motion and dismissed the charges.

The People refiled the complaint on May 14, 2013. On December 6, 2013, Mokhtari again filed a motion to suppress evidence. On December 19, 2013, following a hearing, the trial court granted Mokhtari's motion and dismissed the charges.

On February 11, 2014, the People timely filed a notice of appeal.<sup>1</sup>

## **II. *Factual Background***<sup>2</sup>

On December 1, 2012, San Mateo Police Officer Amanda Fiora learned that other officers had conducted a drug-related arrest at a hotel in San Mateo early that morning. Based on that arrest, Officer Fiore and her partner, Mike Leishman, were given information that a man named David Mokhtari was involved in drug sales and was "hotel hopping" in a red Jeep Cherokee. Officers Fiore and Leishman began undercover surveillance of the Bel-Mateo hotel in Belmont because they suspected that this was one of the hotels at which Mokhtari might appear.

About ten minutes after Officers Fiore and Leishman started their surveillance, shortly after 6:00 p.m., Fiore saw a red Jeep Cherokee pull into the hotel driveway. She observed that the Jeep was displaying neither a front nor a rear license plate. The license plate area had a paper cover "similar to a dealer plate" but not displaying numbers issued by the Department of Motor Vehicles. Officer Fiore could not tell whether there was a temporary operating permit affixed to the vehicle.

Officer Fiore observed Mokhtari<sup>3</sup> park the Jeep and enter the hotel office. After a couple of minutes, Mokhtari returned to the Jeep and began driving to the rear of the

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<sup>1</sup> Penal Code section 1238, subdivision (a)(7), permits the People to appeal a dismissal based upon a defendant's motion to suppress evidence.

<sup>2</sup> We take the facts from the preliminary hearing and the suppression hearing, both of which were considered by the trial court in ruling on Mokhtari's motion to suppress.

<sup>3</sup> Fiore identified Mokhtari as the driver of the Jeep at the preliminary hearing.

hotel. The officers followed in their own vehicle. As they followed, Officer Fiore at no point saw a temporary permit displayed.

As Mokhtari parked the Jeep, the officers also parked and exited their vehicle “to conduct a traffic stop,” suspecting a violation of Vehicle Code section 5200, subdivision (a). Although they had a motive of investigating drug sales, Officer Fiore testified that she would not have stopped Mokhtari without reasonable suspicion of a Vehicle Code violation.

Mokhtari told Officer Fiore that his father owned an automobile dealership and that the dealership was in the process of selling the Jeep. Mokhtari did not have a driver’s license on his person and Officer Fiore observed symptoms “consistent with central nervous system controlled stimulant influence”: “Excited, rapid speech; dilated pupils; hyperactivity; [and] constant movement.”

Officer Fiore told Mokhtari that she was going to perform a pat-down search for weapons, unless Mokhtari gave her permission to search his pockets. She asked him, “Can I search your pockets?” Mokhtari answered, “Yeah. Go ahead.” In his pockets, Officer Fiore found \$225 in cash and pill bottles containing 32 tablets of what appeared to her to be oxycodone. She placed Mokhtari under arrest and searched him again, finding an additional \$560 in cash.

Officer Fiore then searched Mokhtari’s Jeep. In plain view on the passenger seat was a glass cylindrical pipe with white residue that Officer Fiore believed to be used to smoke cocaine base. A paper cup contained an off-white rock-like substance that she believed to be cocaine base. A laptop bag contained pill bottles holding what she believed to be methadone, diazepam, alprazolam, and hydrocodone combined with acetaminophen. The laptop bag also contained a digital scale, small plastic baggies, a notebook that appeared to Officer Fiore to be “pay-owe sheets,” tinfoil containing what appeared to be powder cocaine, and a rolled-up dollar bill containing what appeared to be cocaine base.

At no time during the investigation did Officer Fiore notice a temporary permit on the vehicle. The paper covers of the license plate areas of the Jeep were dealer advertisements concealing California license plates.<sup>4</sup>

### DISCUSSION

“The standard of appellate review of a trial court’s ruling on a motion to suppress is well established. We defer to the trial court’s factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment.” (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

Here, the trial court made no express or implied factual findings, other than that the traffic stop of Mokhtari for a license plate violation was a pretext. Mokhtari argued that the “primary purpose was to detain someone that they should have investigated earlier.” The trial court apparently agreed, stating: “All right. I am going to grant the motion. It is a factually driven case. [¶] Here is the deal: He was the big fish that got away earlier in the day, and, unfortunately, it fell on Officer Fiore to clean up what somebody else did not do right the first time around. The thing that was going to happen was an arrest. [¶] If they would have gotten a warrant from a judge and gone through some paperwork, maybe they would have gotten an arrest warrant or a search warrant. That was the appropriate procedure; not a redo where, clearly, he was going to be stopped not because of the plates but because of what had happened earlier when he got away with something.”

The People argue, and Mokhtari concedes, that an officer’s subjective motivation is irrelevant in determining the propriety of a traffic stop. We agree. The United States Supreme Court has held that “the constitutional reasonableness of traffic stops” does not depend “on the actual motivations of the individual officers involved” (unless the motivation leads to selective enforcement based on considerations such as race). (*Whren*

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<sup>4</sup> Fiore remembered “running the plates” but did not recall the results at the suppression hearing.

*v. United States* (1996) 517 U.S. 806, 813; accord *People v. Suff* (2014) 58 Cal.4th 1013, 1054.) Accordingly, the only issue on appeal is whether there was a constitutional defect in Officer Fiore’s traffic stop of Mokhtari, without regard to her subjective motivation.<sup>5</sup>

The Fourth Amendment protects against unreasonable searches and seizures. (U.S. Const., 4th Amend.; *Terry v. Ohio* (1968) 392 U.S. 1, 20.) An officer may stop and detain a motorist if the officer has reasonable suspicion that the driver has violated the law. (*People v. Wells* (2006) 38 Cal.4th 1078, 1082.) Reasonable suspicion is a lesser standard than probable cause and “the officer’s suspicion must be supported by some specific, articulable facts that are ‘reasonably “consistent with criminal activity.” ’ ” (*Id.* at p. 1083.) “[W]hen there is articulable and reasonable suspicion that a motorist is unlicensed, that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, the vehicle may be stopped and the driver detained in order to check his or her driver’s license and the vehicle’s registration.” (*People v. Saunders* (2006) 38 Cal.4th 1129, 1135.)

“When two license plates are issued by the [Department of Motor Vehicles] for use upon a vehicle, they shall be attached to the vehicle for which they were issued, one in the front and the other in the rear.” (Veh. Code, § 5200, subd. (a).) Despite not having license plates, a vehicle may be operated legally if a temporary operating permit is correctly displayed. (*Id.*, §§ 4156, 5202.) Although the Vehicle Code does not explicitly provide for the placement of a temporary permit, Vehicle Code section 26708, subdivision (b)(3), generally allows drivers to affix signs, stickers, and other materials in specified parts of the windshield or rear window.

Here, Officer Fiore observed that Mokhtari’s Jeep had no visible license plates. She did not observe at any time a temporary permit affixed to the Jeep. Nevertheless, Mokhtari argues that “there was no reasonable suspicion to support . . . the stop” because “[a]fter observing the vehicle and a possible vehicle code violation, they did nothing to

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<sup>5</sup> Mokhtari here raises no ground for excluding evidence beyond the validity of the initial traffic stop. Nor did he do so in the trial court.

investigate the violation, such as looking to see if there was a registration sticker on either the front or back windows or checking the status of the registration despite the fact that the vehicle was parked for some period of time while respondent was in the hotel office.”

Mokhtari’s argument is foreclosed by *In re Raymond C.* (2008) 45 Cal.4th 303 (*Raymond C.*). A police officer observed Raymond C. driving a vehicle without license plates or a temporary permit in the rear window. (*Id.* at p. 305.) The officer could not see whether there was a temporary permit in the front window and he stopped the vehicle for the apparent license plate violation. (*Ibid.*) The stop led to charges that Raymond C. had been driving under the influence of alcohol. (*Id.* at pp. 305-306.) At a suppression hearing, evidence was presented that there was a temporary permit on the front window. (*Id.* at p. 306.)

The *Raymond C.* court noted that although the officer was permitted to investigate further, “[t]he question is whether [the officer] was allowed to stop the car in order to continue his investigation.” (*Raymond C.*, *supra*, 45 Cal.4th at p. 307.) The court rejected Raymond C.’s argument, similar to the argument Mokhtari makes here, that “the officer should have driven around the vehicle to see all the windows.” (*Id.* at p. 308.) The court held that even if the officer could have done as Raymond C. suggested, “he was not required to do so.” (*Ibid.*) “ ‘The reasonableness of [an] officer’s decision to stop a suspect does not turn on the availability of less intrusive investigatory techniques.’ [Citation.] Nor is an officer required to eliminate all innocent explanations that might account for the facts supporting a particularized suspicion.” (*Ibid.*)

This would be a different case if there had actually been a temporary permit displayed on Mokhtari’s Jeep and Officer Fiore had seen it but disregarded it. (See *People v. Hernandez* (2008) 45 Cal.4th 295.) As in *Raymond C.*, Officer Fiore observed no temporary permit. This case differs from *Raymond C.* in that here there is no evidence that, had Officer Fiore investigated further, she would have seen a valid temporary permit. Thus, not only is Mokhtari’s argument foreclosed by *Raymond C.*, the facts here are less favorable for Mokhtari than were the facts for Raymond C.

Mokhtari's argument is also foreclosed by *People v. Dotson* (2009) 179 Cal.App.4th 1045. In *Dotson*, an officer, Deputy Bakulich, stopped a vehicle because he saw that both license plates were absent. (*Id.* at p. 1050.) "During cross-examination, defense counsel asked Deputy Bakulich: 'Did you look in the rear window of the pickup truck to determine if there was a red temporary sticker?' He responded: 'I don't recall if I specifically looked, but I don't recall if there was one or was not . . . at this time.'" (*Id.* at pp. 1050-1051.) The court found that "[u]nder these circumstances, Deputy Bakulich had reasonable, articulable suspicion that defendant was violating vehicle registration laws. Therefore the stop did not violate defendant's Fourth Amendment rights." (*Id.* at p. 1051.) The court concluded: "Absence of license plates provides reasonable suspicion that the driver is violating the law. Unless there are circumstances that dispel that suspicion, that resolve any ambiguities in the legal status of the vehicle's conformance with applicable laws, the officer may stop the vehicle and investigate without violating the driver's Fourth Amendment rights. [Citation.] The uninvestigated chance that a temporary permit might be displayed somewhere on the vehicle is not such a dispelling circumstance." (*Id.* at p. 1052.)

Mokhtari argues that "there was a dispelling circumstance in that the officer observed plates from a car dealership that was located nearby. . . . When a vehicle has plates from a nearby car dealership, this suggests that the vehicle is new and that plates have not yet been issued." What Officer Fiore observed on the vehicle were not "plates from a car dealership"—they were merely paper dealer advertisements. While such advertisements may commonly be affixed to new cars upon sale, they have no legal significance and do not act to dispel an ambiguity in the legal status of the vehicle's conformance with applicable laws. When an officer observes a car with no license plates but sees a valid temporary permit, suspicion is dispelled and legal ambiguity is resolved. When an officer observes a car with paper dealer advertisements instead of license plates and does not observe a valid temporary permit, suspicion is not dispelled and legal ambiguity remains.

Under the circumstances of this case, the traffic stop of Mokhtari was based on specific, articulable facts reasonably leading to a suspicion that the vehicle was operated in violation of the Vehicle Code. The trial court's exclusion of the evidence obtained pursuant to the traffic stop was in error.

**DISPOSITION**

The judgment of dismissal is reversed; the trial court is directed to set aside the order suppressing evidence.

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STEWART, J.

We concur.

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RICHMAN, Acting P.J.

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MILLER, J.