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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE ESPINOZA,

Defendant and Appellant.

B234223

(Los Angeles County
Super. Ct. No. NA087555)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Gary J. Ferrari, Judge. Affirmed as modified.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Chung L. Mar and Victoria B. Wilson, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Jorge Espinoza pled no contest, following the denial of his motion to suppress evidence, to one count of transportation of a controlled substance in violation of Health and Safety Code section 11352, subdivision (a), one count of possession for sale of a controlled substance in violation of Health and Safety Code section 11351, one count of possession of a firearm by a felon in violation of Penal Code section 12021, subdivision (a)(1), and one count of unlawful firearm activity in violation of Penal Code section 12021, subdivision (c)(1).¹ Appellant admitted that he had suffered two prior drug convictions within the meaning of Health and Safety Code section 11370.2, subdivision (a), and one prior serious or violent felony conviction within the meaning of the "Three Strikes" law (Pen. Code, §§ 667, subs. (b)–(i), 1170.12, subs. (a)–(d)). The trial court sentenced appellant to eight years in state prison.

Appellant appeals, contending that the trial court erred in denying his Penal Code section 1538.5 motion to suppress evidence of the narcotics found in his car. We order the abstract of judgment corrected, as set forth in more detail in the disposition. We affirm the judgment of conviction in all other respects.

Facts²

On December 12, 2010, Long Beach Police Department Detectives Patrick Lyon and his partner Detective Ernie Armond were driving in an unmarked police car in Long Beach. The detectives were gang detectives. About 7:30 p.m., a Honda Accord caught Detective Lyon's attention. The Honda made a left turn without signaling, causing the car behind it to stop suddenly.

The detectives conducted a traffic stop, checked appellant's driver's license and learned that it was suspended. They decided to arrest appellant and impound his car.

¹ Appellant apparently told police that he had a firearm at his brother's residence, and one was found there.

² These facts are taken from the hearing on appellant's motion to suppress.

The detectives conducted an inventory search of the car. The search was primarily conducted by Detective Lyon, but Detective Armond searched some areas which Detective Lyon could not reach. In particular, Detective Armond pulled up the carpeting and a piece of plastic from the center console. There, he found a plastic bag containing 30 individual packets of a white powdery substance which appeared to be cocaine.

Discussion

1. Motion to suppress

Appellant contends that the trial court erred in denying his motion to suppress the narcotics found during the search of his car because the prosecution did not meet its burden of proving that the warrantless search and seizure of appellant's vehicle fell within the inventory search exception to the warrant requirement. Specifically, he contends that the prosecution failed to show that the detectives performed the inventory search pursuant to a standard policy of the Long Beach Police Department governing inventory searches. He further contends that the detectives' testimony and actions showed that the inventory search was merely a pretext for an investigatory search.

The standard of 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.)

Any warrantless search is unreasonable unless it falls within one of the recognized exceptions to the warrant requirement. (*Katz v. United States* (1967) 389 U.S. 347, 357.) The burden of proving that a search falls within one of these exceptions rests with the People. (*People v. Williams* (1999) 20 Cal.4th 119, 127.)

Inventory searches of impounded vehicles are a recognized exception to the warrant requirement. (*Colorado v. Bertine* (1987) 479 U.S. 367.) "Because of the risk that an inventory search will be 'a ruse for a general rummaging,' . . . a valid inventory search must adhere to a preexisting policy or *practice*. (*[Florida v.] Wells* [(1990)] 495

U.S. [1,] 4.)" (*People v. Williams, supra*, 20 Cal.4th at p. 138, italics added.) "Of course, *Wells* does not require a written policy . . . or a policy that leaves no room for police discretion, but the record must at least indicate that police were following some 'standardized criteria' or '*established routine*' when they elected to open the containers [citation]." (*Id.* at p. 127, italics added.) The burden is on the prosecution to prove the existence of a policy, practice or routine concerning inventory searches. (*Id.* at p. 138.)

Here, the trial court found Detective Lyon credible and also found that his actions were not motivated by a belief that appellant was carrying narcotics, guns or some other contraband. Exercising our independent judgment, we agree that this search was permissible.

Detective Lyon testified that his department had policies for conducting inventory searches, and that that policy was designed to produce an inventory. When asked what areas he was allowed to search or not allowed to search, Detective Lyon replied: "There is that we search the complete vehicle." Detective Lyon was also asked if the area under the center console was an area that was commonly searched during his inventory searches, and he replied that it was. He explained that he searched that area because in his experience it was a common area for people to hide guns, narcotics and other contraband. On redirect, Detective Lyon testified that his actions in searching appellant's car was not "in any way different or unique than other inventory searches" that he conducted. He explained: "[U]ltimately I search all the vehicles in the same way."

Detective Lyon's testimony is more than sufficient to show that he and his partner, followed a "preexisting . . . practice" and "established routine" in searching appellant's car. Further, Detective Lyon's testimony can be understood as stating that his department's policy was "that we search the complete vehicle." He would therefore be required by policy to search the center console area. (See *United States v. Bowhay* (9th Cir. 1993) 992 F.2d 229, 231 [upholding inventory search during which officer opened closed bag because "the department's policy was to search everything; the officer had no discretion"].)

Appellant also contends that Detective Lyon's testimony and actions showed that he had an investigatory motive in searching the car and the inventory search was only a pretext to search for evidence of other crimes. He contends that this rendered the search invalid. We do not agree.

Detective Lyon acknowledged that he conducted an inventory search of appellant's car for two reasons: "One is for personal property of the driver, to make a correct inventory search of it. That way we're not accused of taking anything. And, number two, is to find anything, illegal contraband, guns or anything like that."

A search for contraband serves to protect police and others from potentially dangerous items which might be in the car, and is a legitimate purpose of inventory searches. (*South Dakota v. Opperman* (1976) 428 U.S. 364, 368-369.) Thus, Detective Lyon's statement that he looked for contraband does not clearly indicate that he was motivated by an improper investigative purpose, that is that he was looking for evidence of crimes by appellant (as opposed to looking for contraband for safety reasons). Similarly, the fact that Detective Lyon searched the center console area because he knew it was an area where people store contraband does not show an investigatory purpose, particularly since Detective Lyon testified that he searches every car the same way. (See *United States v. Edwards* (5th Cir. 1978) 577 F.2d 883, 894-895 [it was reasonable for officer to lift carpet flap and look underneath when conducting inventory search of car.]

Appellant also points to the detectives' actions in taking inventory to support his claim that they had an investigatory purpose and the inventory was just a sham. Specifically, he claims that there were no personal items listed on the inventory report prepared by the two detectives. The form used by the detectives had a checklist on it, and Detective Lyon wrote "none" by the listings for cell phones and firearms. He testified that if there had been any other personal items, he would have marked them on the form. There was no evidence that the car in fact contained personal items. Thus, appellant has not shown that the form was suspiciously incomplete.

Appellant also points out that the inventory report was not filled out until after the inventory was complete, and contends that if the detectives were truly interested in

creating an inventory, they would have filled out the form during the search, not after its conclusion. We see nothing suspicious in this. There were two detectives at the stop. It might not have been comfortable or convenient for the searching officer to fill out a form while he was inside the car. The second officer would need to keep watch on appellant, and probably on the surroundings as well, and it would have been distracting for him to fill out the form for his partner.

Assuming that Detective Lyon did have an investigatory purpose, that would not invalidate the inventory search. Appellant has not cited, and we are not aware of, any cases which hold that the inventory exception to the search warrant requirement is not valid if the searching officers had an investigatory as well as an inventory motive to search the vehicle. The Fifth and Ninth Circuit Court of Appeals have held to the contrary, finding that an investigatory motive does not invalidate an otherwise legitimate inventory search. (*United States v. Bowhay*, *supra*, 992 F.2d at pp. 230-231; *United States v. Orozco* (5th Cir. 1983) 715 F.2d 158, 161; see also *Colorado v. Bertine* (1987) 479 U.S. 367, 371 [no showing that the police, who were following standardized procedures, acted in bad faith or for the sole purpose of investigation].)

Relying on *People v. Torres* (2010) 188 Cal.App.4th 775, appellant contends that because justification for an impound search is dependent on the community caretaking function, the officer's subjective intent comes into play in determining the reasonableness of the search during an impound. Appellant skips over a key part of *Torres*. The Court in *Torres* stated: "The relevant question is whether the *impounding* was subjectively motivated by an improper investigatory purpose." (*Id.* at p. 791, italics added.) This is because "'[a]n inventory search conducted pursuant to an unreasonable impound is itself unreasonable.'" [Citation.]" (*Id.* at p. 786.)

In his opening brief, appellant stated that he was "not challenging the decision to impound the car." *Torres* is of no use to appellant once he concedes that the impound was proper.

Assuming for the sake of argument that appellant is in fact questioning the subjective motivation of the officers in impounding his car, *Torres* would still be of no assistance to him.

The Court in *Torres* held that the impounding of a vehicle driven by an unlicensed driver must be supported by some community caretaking function other than temporarily depriving the driver of the use of the vehicle, or suspicion of evidence of criminal activity. (*People v. Torres, supra*, 188 Cal.App.4th at pp. 787, 792.)

Appellant's vehicle was impounded pursuant to Vehicle Code section 14602.6, because he was driving with a suspended license. The primary purpose of such an impound is to protect the lives and property of other people from the harm caused by unlicensed drivers. (*Alviso v. Sonoma County Sheriff's Department* (2010) 186 Cal.App.4th 198, 206.) Vehicle Code section 14602.6 authorizes impounding a vehicle for up to 30 days. Thus, there is a community caretaking function inherent in many, if not most, Vehicle Code section 14602.6 impounds.

Further, as the Ninth Circuit has explained, "[a]n impoundment may be proper under the community caretaking doctrine if the driver's violation of a vehicle regulation prevents the driver from lawfully operating the vehicle, and also if it is necessary to remove the vehicle from an exposed or *public* location. [Citations.] The violation of a traffic regulation justifies impoundment of a vehicle if the driver is unable to remove the vehicle from a *public* location without continuing its illegal operation." (*Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3d 858, 865, italics added, cited with approval in *People v. Torres, supra*, 188 Cal.App.4th at p. 792.) That was the situation here.

2. Abstract of judgment

Appellant states in a footnote to his opening brief that he requested the trial court to strike rather than stay the Health and Safety Code section 11370.2 enhancement, and that the trial court granted this request on September 20, 2011. There is no documentation from the superior court reflecting this ruling. Accordingly, to the extent

that appellant is requesting that we direct the trial court to prepare an amended abstract of judgment reflecting the trial court's ruling, that request is denied.

Respondent requests that we order the abstract of judgment corrected to reflect the imposition of a \$30 criminal conviction assessment on each count, pursuant to Government Code section 70373. That request is granted.

Disposition

The abstract of judgment is ordered corrected to reflect the imposition of a \$30 criminal conviction assessment on each count, pursuant to Government Code section 70373. The clerk of the superior court is directed to prepare an amended abstract of judgment to reflect that correction. The judgment is affirmed in all other respects.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.