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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER EASLEY,

Defendant and Appellant.

C066036

(Super. Ct. No. 10F0238)

After the trial court denied defendant Christopher Easley's motion to suppress evidence obtained following a detention and search of his person (Pen. Code, § 1538.5),¹ defendant pled no contest to unlawful possession of a dirk or dagger. (§ 12020, subd. (a)(4).) Sentenced to a stipulated term of three years in prison, defendant contends his motion to suppress evidence should have been granted because the detention and subsequent

¹ Undesignated section references are to the Penal Code.

search were illegal. With regard to the detention, defendant did not raise the validity of the initial detention in the trial court. Therefore, this issue is forfeited on appeal. With regard to the search, we conclude the search was justified based on the totality of circumstances. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The night of December 20, 2009, Redding Police Officer Michael Skeen pulled into a convenience store parking lot. Defendant was scratching a lottery ticket on top of a garbage can. When defendant saw Skeen in the patrol car, he immediately threw the lottery ticket toward the garbage can, and headed out of the parking lot. Defendant missed the garbage can and the ticket landed on the ground. Skeen's attention was initially drawn to defendant because his immediate reaction to seeing a police officer was to try to get out of the parking lot.

Skeen detained defendant for littering and defendant was immediately agitated and aggressive. He demanded to know why Skeen had stopped him, shouted and used profanities. Defendant was wearing a black bomber jacket with "white power" and swastika patches on it, red suspenders, and black combat boots with red laces. Because of his training and experience, Skeen was aware defendant's clothing identified him as a White supremacist gang member. He also knew that White supremacists wear black boots with red laces to identify themselves as gang

members and to serve as a "trophy" earned by a gang member who beats and stomps someone with his boots until the victim bleeds. Because of defendant's identification as a gang member with specifically violent "achievements" and his level of agitation, Skeen informed defendant he was going to conduct a pat down search for weapons, for his safety. Defendant told Skeen he would not consent to a search. Skeen replied that given the circumstances, he did not need consent. Defendant started to reach into his pocket and offered to show Skeen his weapons. Skeen told him to stop and to put his hands on his head. Defendant then told Skeen he had a knife and pepper spray. Skeen asked if defendant had ever been convicted of a felony and defendant admitted he had been convicted of a hate crime. Skeen then conducted a search, and recovered a fixed blade knife and pepper spray from defendant's jacket pockets.

Defendant moved to suppress the evidence obtained during the search, arguing the pat down was illegal because: (1) Skeen had no articulable facts to believe defendant was currently armed and dangerous; (2) Skeen illegally searched defendant's pocket because he did not have probable cause to believe it contained contraband, evidence, or weapons; and, (3) the prosecution had to offer a justification for the warrantless search and seizure. At the hearing, defendant's arguments focused on whether defendant had consented to the search and whether Skeen had "sufficient training and expertise to identify

[defendant] as a potential threat and then pat search him. . . . We simply say there wasn't sufficient training and expertise along those lines, and that's our argument."

The People argued defendant had voluntarily told Skeen he had weapons on his person, and that admission gave Skeen probable cause to search defendant. The People also argued that given defendant's angry, agitated state and the fact he was "wearing the uniform of a white supremacist gang member," it was reasonable for the officer to conduct a pat down search for officer safety.

The trial court agreed that defendant's statement identifying the knife and pepper spray was a submission to authority, rather than consent. However, the court found, based on the circumstances, the officer did not need defendant's consent. Rather, the circumstances justified this "very minimal external pat down." Accordingly, the court denied the motion.

DISCUSSION

I

Initial Detention

On appeal defendant argues, for the first time, there was no legal basis for the initial detention because Skeen "did not entertain an objectively reasonable suspicion" that defendant had littered. Specifically, he contends that to be guilty of littering, the act of "dropping debris to the ground must be accompanied by an act that is either 'willful' or 'negligent'"

and, none of the acts "observed by Officer Skeen revealed a willful or criminally negligent act." Thus, according to defendant, Skeen could not reasonably have formed the belief that defendant had littered and it was unreasonable to detain him. Defendant states that the prosecution failed to develop any facts at the hearing to meet its "burden of showing the act observed by Officer Skeen revealed a willful or criminally negligent act of dropping debris on the ground."

It is the prosecution's burden to establish the justification for a warrantless search. (*People v. Williams* (1999) 20 Cal.4th 119, 130 (*Williams*).) However, it is the defendant's burden to raise the issue of a warrantless search and specify why the search or seizure was unreasonable under the circumstances. (*Ibid.*) The defendant meets this burden of specificity where the motion to suppress gives the prosecution and the court reasonable notice of the issues raised.

"Defendants cannot, however, lay a trap for the prosecution by remaining completely silent until the appeal about issues the prosecution may have overlooked." (*Id.* at p. 131.) The determinative inquiry is whether the People had fair notice of defendant's argument and fair opportunity to present responsive evidence. (*Id.* at p. 135; *People v. Oldham* (2000) 81 Cal.App.4th 1, 12 (*Oldham*).)

Before the trial court, defendant did not argue the initial detention for littering was invalid. Since this argument was

not raised at the trial court level, the prosecution had no opportunity to rebut the argument or present responsive evidence. Thus, the argument cannot be raised for the first time on appeal. (*Oldham, supra*, 81 Cal.App.4th at pp. 11-12.) "This is the silence regarding issues about which *Williams* has cautioned." (*Id.* at p. 15.) Because the validity of the initial detention for littering was not raised in the trial court, the issue is forfeited on appeal and we need not consider it further. (*People v. Lewis* (1999) 74 Cal.App.4th 662, 673.)

II

Pat Down Search

Defendant next argues that the search was not justified, as Skeen "provided no articulable facts giving rise to a suspicion that [defendant] was armed or dangerous." We disagree.

After a stop or detention, police officers may pat down the suspect's outer clothing if they have reason to believe the suspect is armed and dangerous. (*Terry v. Ohio* (1968) 392 U.S. 1, 27 [20 L.Ed.2d 889, 909]; *People v. Lopez* (2004) 119 Cal.App.4th 132, 135-136.) This exception to the warrant requirement is limited to intrusions reasonably designed to discover weapons. (*Terry, supra*, 392 U.S. at p. 29 [20 L.Ed.2d at p. 911].) In determining the reasonableness of a challenged search, the court looks to the totality of the circumstances. (*People v. Miles* (1987) 196 Cal.App.3d 612, 617-618; *U.S. v. Salas* (9th Cir.1989) 879 F.2d 530, 535.) Among other things,

these circumstances may include reasonable inferences the officer draws from the facts in light of his training and experience (*Terry, supra*, 392 U.S. at p. 27) and the suspect's behavior, including evasiveness. (*Illinois v. Wardlow* (2000) 528 U.S. 119, 124 [145 L.Ed.2d 570]; *People v. Limon* (1993) 17 Cal.App.4th 524, 534.) "The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." (*Terry, supra*, 392 U.S. at p. 27 [20 L.Ed.2d at p. 909].)

Here, upon seeing a police officer, defendant immediately tried to elude him. Defendant's clothing identified him as a gang member. During the stop, Skeen was at close range with a belligerent and aggressive gang member wearing clothing identifying his violent "achievements" of beating people bloody. When Skeen informed defendant he was going to conduct a pat down search, irrespective of defendant's consent, defendant remained agitated and angry, reached into his pocket and told Skeen he would show the officer his weapons. Under these circumstances, it was reasonable for Skeen to believe his safety was in danger. Accordingly, the search was justified. (*People v. Rios* (2011) 193 Cal.App.4th 584, 599.)

III

Defendant's Clothing as Reason for Detention and Search

Defendant claims "the exclusive reason the officer stopped and searched [defendant] was due to what [defendant] was wearing." Defendant argues detaining and searching him on the basis of only his clothing violated his First Amendment rights. Defendant has cited no authority, and independent research has not revealed any, suggesting that a suspect's possible gang membership, and clothing declaring that membership, is not a valid consideration in the totality of the circumstances supporting a search.

Initially, we note, this argument was not raised in the trial court. Accordingly, the issue is forfeited. (*Williams, supra*, 20 Cal.4th at p. 130.)

Moreover, defendant's premise is flawed. The record does not support the conclusion that defendant was stopped solely because of the clothes he was wearing. Rather, Skeen stopped defendant because of defendant's littering and defendant's reaction to seeing a police officer. Defendant's clothing, in conjunction with his aggressive behavior during the stop, were relevant considerations in Skeen's assessment of his own safety. The clothing indicated defendant was a member of a street gang and had personally committed serious, violent acts. We conclude there was no violation of defendant's First Amendment rights because defendant's clothing was an appropriate consideration in

evaluating the totality of the circumstances supporting the search.

DISPOSITION

The judgment is affirmed.

_____ HOCH _____, J.

We concur:

_____ RAYE _____, P. J.

_____ BUTZ _____, J.