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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

JACOB A. MOORE,

Defendant and Appellant.

C068409

(Super. Ct. No. 10F8137)

Following an unsuccessful Penal Code section 1538.5 motion to suppress evidence essential to his conviction, defendant Jacob A. Moore pled guilty to possession of methamphetamine. (Health & Saf. Code, § 11377, subd. (a).)¹ On appeal, he claims error only in the denial of his motion to suppress. Under the totality of the circumstances in this case, we conclude the pat

¹ Undesignated statutory references are to the Health and Safety Code.

down search was justified by the officers' reasonable suspicion that defendant was armed and dangerous. We affirm the judgment.

BACKGROUND

Because the sole issue on appeal is the denial of the motion to suppress, we summarize the facts as adduced at that hearing.

Shortly after midnight on October 24, 2010, Officer Renault pulled Valorie Tedder over for speeding and erratic driving. As Renault approached the car, Tedder rolled down the window of the car and Renault could smell marijuana. In the car with Tedder were two passengers, Mark Ahern and defendant. Ahern informed Renault he was on active searchable parole. Renault asked for, and received, Tedder's consent to search the car. Officers Hollemon and Denham arrived at the scene as back-up, and to help conduct the search of the car.

When Hollemon arrived at the scene, Ahern was sitting at the side of Renault's patrol vehicle and defendant remained in the back seat of Tedder's car. Prior to his contact with defendant, Renault had informed Hollemon that the car smelled of marijuana and that he had received Tedder's consent to search the car. Hollemon asked defendant to step out of the car and whether he had any weapons or contraband on him. Defendant stated he did not. There was nothing specific about defendant that led Hollemon to believe he possessed any weapons. However, Hollemon's training and experience informed him it is "not

uncommon, where drugs are present in the field, for there to be weapons present as well." Based on this experience, and the fact it was midnight, one of the two passengers in the car was on parole, and the car smelled of marijuana, Hollemon was concerned about officer safety and told defendant he would be conducting a pat down search for weapons.

Before the search, Hollemon asked if defendant had anything that would "poke me, stick me, or hurt me." Defendant answered he had a folding pocket knife in the pocket of his jeans. Hollemon saw the top of the knife protruding from defendant's pocket and, for his safety, he removed the knife. Defendant's previous dishonesty about having weapons heightened Hollemon's safety concerns. He began the pat down search and felt a hard rectangular object in defendant's left rear pocket that defendant identified as his cell phone. Hollemon asked permission to remove the object to confirm it was a cell phone, and defendant said he "did not have a problem" with Hollemon doing so. The item was a digital scale. Hollemon felt another hard rectangular box-shaped item in defendant's left front pocket. Hollemon again asked if he could retrieve the object to "see what it was." Defendant answered yes. That item was a pack of cigarettes. In removing the cigarettes from defendant's pocket, Holleman also removed a baggie that was "in between one side of the pack of cigarettes and [Hollemon's] thumb." That baggie contained a white crystalline substance. Hollemon's

training and experience led him to suspect the substance was crystal methamphetamine. Defendant was handcuffed and detained.

Defendant was charged with sale or transportation of methamphetamine (§ 11379, subd. (a)) and possession of methamphetamine (§ 11377, subd. (a)). He filed a motion to suppress and argued there was not specific and articulable suspicion that he was armed and dangerous so as to justify the pat down search.

The trial court denied the motion to suppress. The trial court found that the stop occurred after midnight, there was suspicious activity leading up to the stop, the officers believed there were drugs in the car, and there was an active parolee in the car. Relying on *People v. Collier* (2008) 166 Cal.App.4th 1374 (*Collier*) and *United States v. Sakyi* (4th Cir. 1998) 160 F.3d 164, the trial court found there were sufficiently specific and articulated facts to justify a pat down search of the passengers in the car. As for going into defendant's pockets, the court found defendant consented to the removal of the knife and the cigarettes. The trial court specifically found Hollemon inadvertently removed the baggie from defendant's pocket, along with the pack of cigarettes. Accordingly, the court denied the motion to suppress.

Defendant then pled guilty to possession of methamphetamine. Imposition of sentence was suspended and defendant was placed on three years' formal probation.

DISCUSSION

Defendant contends the trial court erred in denying his motion to suppress because there were not specific articulable facts to lead Holleman to reasonably suspect defendant was armed and dangerous. Rather, Holleman's justification for the search was a generalized concern for officer safety.

On review, we defer to the trial court's factual findings when they are supported by substantial evidence. Based on the facts found, we independently determine whether the pat down search was reasonable under the Fourth Amendment. (*People v. Glaser* (1995) 11 Cal.4th 354, 362; *People v. Ledesma* (2003) 106 Cal.App.4th 857, 862.) When a motion to suppress has been denied, we must view the evidence in the light most favorable to the order denying suppression. (*People v. Colt* (2004) 118 Cal.App.4th 1404, 1407.)

In the context of an ordinary traffic stop, an officer may conduct a pat down search only if the officer has a reasonable suspicion that the person may be armed and dangerous. (*Knowles v. Iowa* (1998) 525 U.S. 113, 117-118 [142 L.Ed.2d 492].) The officer's reasonable suspicion must be based on "specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant' the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons." (*Michigan v. Long* (1983) 463 U.S. 1032, 1049 [77 L.Ed.2d 1201], fn. omitted; *Terry v. Ohio*

(1968) 392 U.S. 1, 21 [20 L.Ed.2d 889].) We do not view the facts and inferences in isolation or taken separately from each other, rather we review the totality of the circumstances to determine the reasonableness of the search. (*U.S. v. Arvizu* (2002) 534 U.S. 266, 273-275 [151 L.Ed.2d 740].) In considering the totality of the circumstances, we must give due weight to the factual inferences drawn by law enforcement. (*Ibid.*)

Contrary to defendant's claim, his presence in a car with a parolee was not the only fact Hollemon relied upon to justify the pat down search. Rather, it was after midnight, and the driver had been speeding and driving erratically. Renault smelled marijuana from the car and shared that information with Hollemon. It was reasonable for the officers to infer the passengers of the car might be in possession of or transporting drugs. Cases have recognized that weapons and drugs are commonly found together. (See *U.S. v. Sakyi* (4th Cir.1998) 160 F.3d 164, 169; *People v. Osborne* (2009) 175 Cal.App.4th 1052, 1060.) In addition, Hollemon's training and experience informed him that where there are drugs, there are also frequently weapons. Thus, as in *Collier, supra*, "this was no ordinary traffic stop." In the circumstances of this case, following a lawful traffic stop, "when the officer has a reasonable suspicion that illegal drugs are in the vehicle, the officer may, in the absence of factors allaying his safety concerns, order the occupants out of the vehicle and pat them down briefly

for weapons to ensure the officer's safety and the safety of others.' [Citation.]" (*Collier, supra*, 166 Cal.App.4th at pp. 1377-1378.)

Here, there were no facts to allay Hollemon's safety concerns. Rather, the facts increased Hollemon's safety concerns. Upon being asked to exit the car, defendant lied when he denied he was armed. Before the search began, defendant admitted he had a knife in his pocket. Hollemon could see the top of a knife protruding from defendant's pocket. At that point, Hollemon did not have a reasonable suspicion that defendant was armed, he had actual knowledge defendant was armed.

Defendant argues there are a number of circumstances that did not exist here, and contends the absence of those facts must mean this pat down was not justified. While factors such as defendant's clothing, furtive gestures, and the location of the traffic stop are among the circumstances that may be considered to determine whether there is a reasonable basis for suspecting a defendant is armed, they are not the only facts that can lead to that conclusion. Here, the pat down search was justified by the totality of the circumstances, including the suspicious activity leading to the traffic stop, the time of the stop, the smell of marijuana, and the presence of a parolee as a passenger in the car. Accordingly, the trial court properly denied the motion to suppress.

DISPOSITION

The judgment is affirmed.

HOCH, J.

We concur:

RAYE, P. J.

MAURO, J.