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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAN SEWELL,

Defendant and Appellant.

C071496

(Super. Ct. No. SF119894B)

Following the denial of his motion to suppress evidence, defendant Brian Sewell pled guilty to being a felon in possession of a firearm. (Pen. Code, §§ 1538.5, 29800, subd. (a)(1).)¹ On appeal, he contends the trial court erred when it denied his motion to suppress evidence. Disagreeing, we shall affirm.

¹ Further undesignated statutory references are to the Penal Code.

FACTUAL AND PROCEDURAL BACKGROUND

Evidence from the Suppression Hearing²

At around 7:40 p.m. on February 17, 2012, Stockton Police Officer Houston Sensabaugh saw an Infiniti pass him from the opposite direction, at a distance of about six feet. Sensabaugh made a U-turn and followed because he thought the Infiniti's windows were illegally tinted. The car sped up after Sensabaugh began following it, and was traveling "a lot faster" than the posted speed limit. Sensabaugh could not see the people in the Infiniti due to the tinted windows.

As the Infiniti pulled into a driveway, Sensabaugh pulled up behind it and activated his red and blue lights. Directly after Sensabaugh turned on his lights, the front passenger (subsequently identified as defendant) opened his door and stuck out his right leg. Sensabaugh immediately ordered all the occupants to remain in the car and defendant complied.

Sensabaugh approached the car, noted there were three men inside, informed them of the reason for the traffic stop, obtained identification from each of them, and returned to his patrol car. Because he was alone, he radioed for backup and then checked the names of the car's occupants for warrants. The records search revealed that the driver, Deonicio Wright, was wanted for questioning in connection with a homicide investigation and the passenger seated in the middle of the backseat, Maurice Miles, was on active and searchable probation. The records check took from two to five minutes and the first backup officer had arrived by the time it was done.

² The trial court expressly stated it did not consider evidence from the preliminary hearing in its determination of the section 1538.5 motion, but only when considering the section 995 motion concurrently litigated. For this reason, we disregard the many references in defendant's briefing to evidence from the preliminary hearing.

The officers summoned all three men from the Infiniti, conducted patdown searches of each, and placed them in patrol cars. Sensabaugh then searched the Infiniti, based on Miles's probation condition.

Sensabaugh first searched under the driver's seat and found nothing of significance. He then searched the backseat area where Miles had been seated. On the floor in the backseat, on the driver's side, Sensabaugh found a \$10 bill and 9.54 grams of rock cocaine, individually wrapped in six clear plastic packages. Sensabaugh then searched the front passenger seat area and found a loaded .40-caliber magazine in the passenger door pocket and a loaded .40 caliber handgun in the glove compartment. He also found a current bill of sale for the Infiniti, releasing ownership of the car to defendant for the amount of \$100.

Motion to Suppress and Ruling

Defendant moved to suppress the evidence found in the car, arguing the initial stop was unlawful, the detention was prolonged, and the search of the car exceeded the scope of a proper probation search. The trial court denied the motion.

In a detailed oral ruling, the court found the traffic stop permissible based on Sensabaugh's observation of tinted windows and reasonable suspicion that they were illegally tinted. The court further found no evidence that the stop was unduly prolonged by the warrant check and that Sensabaugh was permitted to ask for identification and could lawfully order the occupants to remain in or get out of the car. The court found that the driver's actions in speeding up once the patrol car began following and the passenger's immediate attempt to get out of the Infiniti after the stop, taken in context, caused reasonable concern for officer safety. Finally, the court found the initiation of the probation search permissible based on Miles's probation search condition, and that the search of the Infiniti proceeded as "a logical progression of information that [Sensabaugh] received which made the search of both the backseat and the front seat" permissible.

DISCUSSION

Defendant contends the trial court erred when it denied his motion to suppress evidence, arguing that the patdown, detention, and vehicle search violated his Fourth and Fourteenth Amendment rights.

I

The Stop, Patdown, and Detention

A. Standard of Review

When ruling on a section 1538.5 motion to suppress, the trial court “must find the historical facts, select the rule of law, and apply it to the facts in order to determine whether the law as applied has been violated. [Citation.] We review the court’s resolution of the factual inquiry under the deferential substantial evidence standard. The ruling on whether the applicable law applies to the facts is a mixed question of law and fact that is subject to independent review.” (*People v. Ramos* (2004) 34 Cal.4th 494, 505.) “In reviewing the trial court’s denial of a motion to suppress evidence, we 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.)

B. Initial Stop

Although defendant appears to argue initially that the traffic stop itself was constitutionally infirm, his argument on this point is not separately headed and he concedes in his reply brief that “the stop itself was lawful due to either the tinted windows or speeding” and “a temporary detention was also justified--but only to the extent necessary to investigate the perceived traffic violations.” We accept the concession and proceed to our analysis of the events that followed the initial stop of the car in which defendant was riding.

C. *Patdown*

Defendant contends his patdown search, conducted by officers after he was out of the Infiniti, was illegal because it “tainted the detention” as well as “tainted the entire car search as to [defendant].”

First and foremost, as the People point out, this claim is forfeited due to defendant’s failure to challenge his search in this basis in the trial court. (See *People v. Williams* (1999) 20 Cal.4th 119, 129-131.)

Second, it is highly probable that this failure resulted from trial counsel’s observation that the patdown search of defendant yielded no *evidence*, either directly or indirectly, thus a section 1538.5 motion would not provide a remedy for defendant’s complaint.

Third and finally, to the extent that defendant complains that the time it took the officers to pat him down unduly prolonged his detention (although admitting that the *quantity* of time that defendant was detained was “not huge,” arguing that it was “the *quality* of that time that made it long”), we need not address his specific claim. As we discuss immediately *post*, ample evidence supports the trial court’s finding that the total length of the detention was justified.

D. *Detention*

Defendant next contends his detention was unlawfully prolonged. The duration of a traffic stop and any subsequent detention should be no longer than is reasonably necessary for the officer to complete traffic-related duties, such as asking for and obtaining a driver’s license or identification, explaining the reason for the stop, writing the citation, and obtaining a promise to appear. (*People v. McGaughran* (1979) 25 Cal.3d 577, 584; *People v. Miranda* (1993) 17 Cal.App.4th 917, 927; *Williams v. Superior Court* (1985) 168 Cal.App.3d 349, 357-358 (*Williams*).) A warrant check is “permissible as long as [it does] not prolong the stop beyond the time it would otherwise take.” (*People v. Brown* (1998) 62 Cal.App.4th 493, 498 (*Brown*); *People v. Bell* (1996)

43 Cal.App.4th 754, 767.) The reason for this rule “is to preclude officers from imposing a general crime investigation upon the detained traffic offender that is not ‘reasonably necessary’ to completion of the officer’s traffic citation duties unless the officer has an independent reasonable suspicion that the driver has committed unrelated offenses.” (*Williams*, at p. 358; *Brown*, at pp. 498-499.) “The government interest in apprehending individuals with outstanding arrest warrants outweighs the minimal inconvenience to that already lawfully experienced by the offender as a result of his or her traffic violation.” (*Brown*, at p. 498.)

There is no defined maximum permissible time limit for a stop. We assess the reasonableness of each detention in light of its particular circumstances. (*Williams*, *supra*, 168 Cal.App.3d at p. 358; *People v. Russell* (2000) 81 Cal.App.4th 96, 102 (*Russell*)). Circumstances that develop or are discovered during a stop may create reasonable suspicion sufficient to support prolonging the detention. (*Russell*, *supra*, 81 Cal.App.4th at p. 102.) “[T]he question is whether the police diligently pursued a means of investigation reasonably designed to confirm or dispel their suspicions quickly.” (*Ibid.*)

Here, upon approaching the Infiniti and seeing three men inside, Sensabaugh returned to his patrol car and immediately requested backup. Such action was not unreasonable, given that he was alone and confronting three men in, as he testified, a “not so good area of town,” and the driver appeared to have taken evasive action when followed, coupled with defendant’s attempt to get out of the car without permission. Although defendant complains that Sensabaugh immediately called for backup before addressing the tinted windows, he cites no authority to support the proposition that a detention is *unreasonably* prolonged if a peace officer fails to address a potential traffic violation *before* he has identified the car’s occupants and has addressed any reasonable officer safety concerns. We are aware of no such authority.

After requesting backup, Sensabaugh remained in his patrol car and ran warrant checks on the three men, during which time (two to five minutes) his backup arrived. Thus, neither the warrant check nor the request for backup unreasonably prolonged the detention. After discovering the wants and warrants for two of the car's three occupants, the officers were entitled to prolong the stop in order to follow up on the new information they had obtained and effectuate a probation search of the car. Circumstances that develop or are discovered during a stop may create reasonable suspicion sufficient to support prolonging the detention. (*Russell, supra*, 81 Cal.App.4th at p. 102.) Under these circumstances, defendant's detention was not unduly prolonged.

II

The Probation Search

Finally, defendant contends that the search of the passenger compartment of the car was illegal. Specifically, he appears to agree that the officers were permitted to search the car in connection with Miles's probation condition, but contends that the officers improperly expanded their search beyond the backseat area where Miles had been seated and into which he could reach.

A. Factual Findings

As we discussed *ante*, we review the court's resolution of the *factual* inquiry for substantial evidence, viewing the record in the light most favorable to the trial court's ruling. Here, the trial court found the initiation of the probation search to be permissible based on Miles's probation search condition and that the search proceeded as "a logical progression of information that [Sensabaugh] received which made the search of both the backseat and the front seat" permissible.

In making this finding, the trial court clearly impliedly, if not explicitly, found the officer's testimony that he began the search of the car in the area under Miles's control, and only proceeded to other areas after locating contraband, to be credible--the trial

court's ruling accepted this version of events. As we explain *post*, substantial evidence supports this finding; thus we decline to question it further.

B. *Analysis*

Upon discovery of Miles's searchable probation status, officers were permitted to conduct a search to ensure Miles was in compliance with the terms of his probation. Probation search conditions permit law enforcement officers to search without " 'reasonable cause.' " (*People v. Bravo* (1987) 43 Cal.3d 600, 611.) As we have discussed, Sensabaugh testified that he first found drugs and money located on the floor of the backseat (in an area clearly within Miles's immediate control). At this point, Sensabaugh had probable cause to believe the car contained contraband--indeed, he had already found contraband--and could legally search the entire car. (*Pennsylvania v. Labron* (1996) 518 U.S. 938, 940 [135 L.Ed.2d 1031, 1036] [under automobile exception, if a car is readily mobile and probable cause exists to believe it contains contraband, Fourth Amendment permits search].)

Defendant argues that Sensabaugh's testimony on direct examination that he *first* searched the backseat area and located the drugs and *then* found guns in the front passenger area was effectively impeached by reference to his report on cross-examination, which suggested a different order of events. But Sensabaugh testified that his report was not a reflection of the order in which he searched the areas of the car but rather a "list," not a "timeline." He never retracted or qualified his testimony that he *first* found contraband in the area accessible to Miles. The trial court implicitly found that testimony to be credible in its finding regarding the progression of the search.

The power to assess the credibility of witnesses, resolve conflicts in testimony, weigh evidence, and draw factual inferences is vested in the trial court. (*People v. Woods* (1999) 21 Cal.4th 668, 673.) We do not reweigh evidence or reevaluate a witness's credibility. It is only when evidence is inherently improbable and impossible of belief that this court can reject evidence accepted by the trier of fact. (*People v. Barnes* (1986)

42 Cal.3d 284, 306.) Such is not the case here. Viewed in the light most favorable to the trial court's ruling, substantial evidence amply supports it.

DISPOSITION

The judgment is affirmed.

DUARTE, J.

We concur:

RAYE, P. J.

MURRAY, J.