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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. TYRONE RAYMOND SMITH, Defendant and Appellant.	C084267 (Super. Ct. No. 14F08028)

Following a jury trial, defendant Tyrone Raymond Smith was found guilty of possession of a firearm by a felon and possession of ammunition by a felon. Sentenced to two years eight months, defendant appeals. He contends the trial court erred in denying his motion to suppress evidence, pursuant to Penal Code[1] section 1538.5, because such evidence was obtained as a result of his unlawfully prolonged detention, in

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[1] Further section references are to the Penal Code unless otherwise indicated.

violation of his rights under the Fourth Amendment to the United States Constitution. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I

Facts

On December 2, 2014, Sacramento County Sheriff's Deputy Shaun Hampton,[2] was patrolling the Sacramento area in his unmarked car when he noticed a red Chrysler Pacifica making an illegal lane change. Deputy Hampton began following the car and recognized the license plate (5CQF702), as one potentially involved in two recent crimes: a drive-by shooting on August 19, 2014, and a home invasion robbery on October 22, 2014.

Related to the August shooting, he located a computer aided dispatch event for a "red Chrysler Pacifica with a license plate of 5CQF702," along with a "citizens report that a 'black male in his late 30s or early 40s was in the vehicle and shot at an apartment.' " As to the October home invasion, Deputy Hampton was monitoring traffic in Sacramento "when he heard the dispatch regarding a home invasion robbery on Watt Avenue," and "a citizen eyewitness providing a description of the car and a partial license plate of '702.' "[3]

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[2] Deputy Hampton testified he had been a deputy for 16 years and had conducted "hundreds, if not thousands," of investigations. He also stated he had firearm training and was extensively trained in various levels of investigations, including vehicle stops.

[3] These facts regarding the prior incidents were included in the People's opposition to the motion to suppress. On appeal, defendant asserts this court should not consider these assertions because they are not supported by substantial evidence. At the preliminary hearing, however, the People and defendant's counsel stipulated to the use of the record, which included the preliminary hearing transcript as well as the four briefs filed by the parties.

Deputy Hampton called for backup, and at 8:23 a.m., roughly nine patrol cars from the Sacramento Sheriff's Department and at least one from the California Highway Patrol assisted him in pulling defendant over on the side of the freeway. In doing so, a portion of the freeway was shut down.[4] Officers then ordered the driver -- defendant -- and the passenger and registered owner of the car -- Nicky Currie -- out at gunpoint for officer safety. Currie's two children were sitting in the backseat of the car. Currie consented to a search of her car, and two deputies searched it but did not find anything of evidentiary value.

During the search, Deputy Hampton learned defendant lived with Tiffany Royster, a probationer. At 9:02 a.m., and while defendant was still detained, Deputy Hampton and others, drove to defendant's apartment to conduct a search of the home. During the search, deputies found 90 rounds of ammunition, which Royster said belonged to defendant. Royster also said she had seen defendant in possession of a gun.

Upon obtaining the ammunition and Royster's statements, deputies returned to the vehicle, which was still on the side of the freeway. Deputy Hampton conducted a second search of the car and at 10:22 a.m., discovered a stolen gun under the front driver's seat of the car where defendant had been sitting. Defendant was arrested. Approximately two hours elapsed between the initial stop and discovery of the gun.

II

Procedural History

Defendant was charged with possession of a firearm by a felon and possession of ammunition by a felon.

Before trial, he moved to suppress all evidence obtained as a result of his detention. The prosecution submitted an opposition to defendant's motion. No

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[4] Deputy Hampton testified he made a felony stop.

evidentiary hearing specific to the motion to suppress was held, and the parties stipulated the court could rule on the motion based on the preliminary examination transcript and the parties' briefs, which related the above facts.

The trial court denied defendant's motion. It reasoned the initial stop and first search of the vehicle were proper based on Deputy Hampton's reasonable belief of defendant's involvement in criminal activity. After the first search of the vehicle revealed "nothing," however, the court held the time to detain defendant and search the car had lapsed and there were no articulable facts presented to justify defendant's further detention.

Nevertheless, the inevitable discovery doctrine prevented the court from suppressing the evidence. Even without defendant's detention, the court reasoned, the incriminating evidence would have been discovered because defendant's roommate was on searchable probation. Deputies would have still searched his home, found the ammunition in the kitchen, determined it belonged to defendant, established probable cause to arrest defendant, searched the car a second time, and discovered the handgun.

The jury found defendant guilty on both counts. This appeal followed.

DISCUSSION

Defendant argues the trial court erred by denying his motion to suppress because the evidence was obtained as a result of an unlawfully prolonged detention, in violation of his Fourth Amendment rights. He claims the record is void of specific articulable facts known to deputies showing defendant was involved in criminal activity other than a traffic infraction, justifying only a limited detention. Accordingly, he contends any evidence obtained as a result of his prolonged detention, including the ammunition, the firearm, and Royster's and defendant's admissions, should be excluded. He further asserts the inevitable discovery doctrine is inapplicable to his case. We disagree.

When reviewing a trial court's denial of a motion to suppress, we defer to the trial court's factual findings, express or implied, where supported by substantial evidence.

(*People v. Glaser* (1995) 11 Cal.4th 354, 362.) "In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*Ibid*.)

First, we address defendant's argument deputies did not have reasonable suspicion to extend the detention beyond what was required for the traffic stop. Defendant's argument, however, assumes he was pulled over for a traffic violation when the court found, and the record demonstrates, Deputy Hampton executed a felony stop to investigate defendant's possible connection to a shooting and home invasion robbery.

Here, Deputy Hampton called for backup prior to initiating the stop, multiple police cars pulled defendant over, blocking part of the freeway, and defendant was ordered out of the car at gunpoint for officer safety. Further, Deputy Hampton testified he was making a felony stop. Hence, defendant's characterization of the detention as an extended traffic stop is flawed, as the facts suggest deputies were making a felony stop to conduct an investigation. To the extent defendant challenges his detention resulting from the felony stop, his argument still fails.

The judicial inquiry into the reasonableness of a detention is a dual one -- whether the deputies' actions were justified at the inception and whether they were reasonably related in scope and duration to the circumstances which justified the interference in the first place. (U.S. Const., 4th Amend.; *Terry v. Ohio* (1968) 392 U.S. 1, 20 [20 L.Ed.2d 889, 905]; *People v. Gallardo* (2005) 130 Cal.App.4th 234, 237-238.)

A detention is justified at its inception when the detaining deputy can point to *specific articulable facts* which, considered in light of the *totality of the circumstances*, provide some objective manifestation the person may be involved in criminal activity. (*United States v. Arvizu* (2002) 534 U.S. 266, 273 [151 L.Ed.2d 740, 749-750]; *People v. Wells* (2006) 38 Cal.4th 1078, 1083.) A deputy's subjectively held suspicions must be objectively reasonable, "such as would cause any reasonable police officer in a like position, drawing when appropriate on his training and experience [citation], to suspect

the same criminal activity and the same involvement by the person in question." (*People v. McCluskey* (1981) 125 Cal.App.3d 220, 225-226.)

Here, upon noticing an illegal lane change, Deputy Hampton, a seasoned deputy, recognized defendant's car -- the make and model, color, and license plate -- from two crimes committed less than four months prior. Both of these crimes were carried out in Sacramento, near where Deputy Hampton noticed defendant. Further, once defendant was pulled over, Deputy Hampton had the ability to confirm defendant's physical characteristics matched those of the August shooting suspect -- "black male in his late 30s or early 40s," -- providing further reasonable suspicion to believe defendant was involved in the past crimes.

Defendant, in claiming the above facts fail to furnish a factual basis for reasonable suspicion, cites to *In re Eskiel S.* (1993) 15 Cal.App.4th 1638. There, the court held a radio broadcast of a possible gang fight was an insufficient basis for an officer to claim reasonable suspicion to detain a defendant. The court found there was no source to testify to the validity and reliability of the radio broadcast when all the officer saw was the defendant and others fleeing police, and reasoned a radio broadcast alone was comparable to uncorroborated evidence from an anonymous informant. (*Id.* at p. 1644.) Defendant's reliance on this case is misplaced because Deputy Hampton relied on multiple reports indicating defendant and the car he was driving had been involved in criminal activity. Deputy Hampton further corroborated that information by comparing the reported description of the car and perpetrator with defendant and the car he was driving. "It is well settled that police officers may rely on information coming to them from official sources." (*People v. Schellin* (1964) 227 Cal.App.2d 245, 251.) When an officer receives a dispatch or sees a dispatch report, he may use the information, along with his observations, experience, and knowledge, to establish reasonable suspicion to investigate criminal activity. (*Ibid.*) Here, Deputy Hampton used corroborated information when initiating a felony car stop and searching defendant's car.

Considering the totality of the circumstances based on specifically articulated facts -- defendant's link to the crimes based on the description of the car, a description of defendant himself, and the proximity of the crimes to where Deputy Hampton identified defendant -- we conclude there was an objective manifestation defendant may be involved in criminal activity justifying defendant's detention at its inception.

Defendant next challenges the *duration* and *scope* of the investigative detention, claiming deputies were not justified in holding him for approximately two hours during which they left the scene of the traffic stop to search his home because they learned his roommate was on probation.

When assessing if a detention is too long in *duration*[5] to be justified as an investigative stop, courts decide on the facts of each case, with a focus on whether deputies: (1) diligently pursued a means of investigation reasonably designed to dispel or confirm their suspicions quickly; and (2) acted swiftly in a developing situation. (*United States v. Sharpe* (1985) 470 U.S. 675, 686-687 [84 L.Ed.2d 605, 615-616]; *People v. Celis* (2004) 33 Cal.4th 667, 674-675.) There is no set time limit for a permissible investigative stop.[6] (*People v. Russell* (2000) 81 Cal.App.4th 96, 102; *Williams v. Superior Court* (1985) 168 Cal.App.3d 349, 358.)

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5 If an investigative detention becomes unduly prolonged, the detention may be considered a de facto arrest, which would be unreasonable unless the officer has *probable cause.* (*People v. Gomez* (2004) 117 Cal.App.4th 531, 538.)

6 See *People v. Delgado* (2018) 27 Cal.App.5th 1092, 1103 [holding 84-minute detention did not constitute unlawfully prolonged detention "*as a matter of law*"]; *People v. Gabriel* (1986) 188 Cal.App.3d 1261, 1265 [rejecting claim detention was too long "simply because of its one-and-a-half to two-hour length" because "the record [wa]s devoid of any evidence the officers engaged in any misconduct or in any way delayed the search"]; *U.S. v. Bloomfield* (8th Cir. 1994) 40 F.3d 910, 917-919 [holding one-hour detention waiting for canine was lawful when officer had reasonable suspicion of drug-related activity based on the totality of the circumstances.]

A detention is properly limited in *scope* if the officer's investigative conduct is reasonably related to the circumstances justifying the stop. (*Hiibel v. Sixth Judicial Dist. Ct.* (2004) 542 U.S. 177, 188 [159 L.Ed.2d 292, 304) While officers cannot engage in general crime investigation not reasonably necessary to the completion of the traffic stop, the scope of an intrusion will vary with the particular facts and circumstances of each case. (*Florida v. Royer* (1983) 460 U.S. 491, 500 [75 L.Ed.2d 229, 238]; *Williams v. Superior Court*, *supra*, 168 Cal.App.3d at p. 358.)

Here, the circumstances justifying the interference and the crimes for which defendant was being investigated involved the car he was driving. Deputy Hampton had reasonable suspicion the *driver of the car* was involved in two serious violent crimes, and absent the presence of the car, defendant would not have become the subject of a felony investigative stop.

The trial court held and we agree, defendant's detention from 8:23 a.m. to 9:02 a.m. -- during which deputies ordered occupants out of the car at gunpoint, separated them, questioned them, and searched the car -- was reasonable in duration and scope. During this time, deputies acted swiftly to confirm or dispel their suspicions the car was used for criminal purposes by conducting an investigation reasonably related to the circumstances which justified the stop.

Once the car was searched, however, suspicions related to defendant's car were dispelled, and further detention of defendant was unwarranted. We decline to set precedent which will allow deputies or officers to leave a detainee on the side of the freeway for an hour and one-half while they engage in general investigative procedures. Nevertheless, we conclude the discovered evidence is admissible based on the inevitable discovery doctrine.

Defendant argues the inevitable discovery doctrine does not apply because: (1) the deputies would not have found the ammunition or firearm if he had not been unlawfully detained; (2) Royster would not have made statements about defendant if the

ammunition was never found; and (3) the firearm and ammunition could have been removed or disposed of if defendant had not been unlawfully detained. We disagree.

The inevitable discovery doctrine "is in reality an extrapolation from the independent source doctrine: Since the tainted evidence would be admissible if in fact discovered through an independent source, it should be admissible if it inevitably would have been discovered." (*Murray v. United States* (1988) 487 U.S. 533, 539 [101 L.Ed.2d 472, 481-482], italics omitted.) The purpose of the rule is to prevent the setting aside of convictions which would have been obtained without police misconduct. (*People v. Robles* (2000) 23 Cal.4th 789, 801.)

Evidence will not be suppressed if the prosecution meets the burden of "establish[ing] by a preponderance of evidence that the information ultimately or inevitably would have been discovered by lawful means." (*Nix v. Williams* (1984) 467 U.S. 431, 444 [81 L.Ed.2d 377, 387-388].) The appropriate test is not one of certainty, but rather of reasonably strong probability. (*People v. Tye* (1984) 160 Cal.App.3d 796, 800.) Still, the prosecution's showing must not be based on speculation, but instead on " 'demonstrated historical facts capable of ready verification or impeachment.' " (*People v. Cervantes* (2017) 11 Cal.App.5th 860, 872.) The exception requires the " 'court to determine, viewing affairs as they existed at the instant before the unlawful search, what *would have happened* had the unlawful search never occurred.' " (*U.S. v. Eng* (2d Cir. 1993) 997 F.2d 987, 990.)

Here, as we discussed, defendant's detention was lawful up to the end of the first search of the car. As to his detention following the search, there are verifiable facts showing deputies *would* have continued their investigation of defendant regardless of his detention status. Notably, deputies went to defendant's home to conduct a lawful probation search. If deputies were prepared to abandon the investigation after the first search of the car, they would not have sought to also search defendant's home. Their decision to search his home after learning of his roommate's status as a probationer

shows that at the point the detention became unlawful, deputies would still have discovered ammunition belonging to defendant and taken Royster's statements justifying his arrest and subsequent search of the car.

Defendant's argument he may have removed the gun before its discovery is unavailing. In making this argument, defendant cites to *People v. Hughston* (2008) 168 Cal.App.4th 1062. The court in *Hughson* reversed the application of inevitable discovery where the evidence showed defendant's companions could have removed the evidence before officers would have reached it. (*Id*. at pp. 1073-1074.) While the court used this reasoning as *support*, the conclusion relied on the fact the prosecution merely showed the evidence *could* have been removed before police had a chance to discover it, not that it inevitably *would* have been removed. Hence, the essential elements of the inevitable discovery doctrine were not established, making our case distinguishable from *Hughston*.

Additionally, in *Hughston*, the issue was whether a third party who likely had no knowledge of the criminal investigation could have removed the evidence. (*People v. Hughston*, *supra*, 168 Cal.App.4th at p. 1073.) By contrast, the issue here is whether defendant, aware of the investigation, could have removed or disposed of the evidence. Defendant does not cite to any authority which protects a person's right to conceal evidence after learning he is under investigation. In fact, the Supreme Court has held a valid search is not tainted by prior illegality if, but for the illegality, defendant would have had the opportunity to remove or destroy the evidence. (*Segura v. United States* (1984) 468 U.S. 796, 804-805 [82 L.Ed.2d 599, 608].) The concept of a constitutional right to destroy evidence, the court reasoned, "defies both logic and common sense." (*Id*. at p. 816 [82 L.Ed.2d at p. 616].) Denying use of the inevitable discovery doctrine based on the possibility a defendant may have removed or disposed of evidence would reward him for committing an illegal act.

Even if we did analyze our facts based on the reasoning in *Hughston*, defendant's argument would still fail. As we discussed above, regardless of his detention, deputies

would have still driven to his residence to search it. It is unlikely, if defendant decided to drive to his residence upon being released, he would have gotten there early enough to conceal the evidence before deputies arrived. Deputies would have still conducted a legal search of the home, discovered the ammunition, and gotten Royster's statements, giving them probable cause to arrest him and again search the car.

We conclude the prosecution met its burden of establishing the evidence inevitably would have been discovered by lawful means, and hence, the exclusionary rule will not apply to exclude the evidence discovered during defendant's detention.

DISPOSITION

The judgment is affirmed.

/s/
Robie, Acting P. J.

We concur:

/s/
Butz, J.

/s/
Hoch, J.