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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

TRANES LAMONT GOINES,

Defendant and Appellant.

D060135

(Super. Ct. No. SCD218439)

APPEAL from a judgment of the Superior Court of San Diego County, Leo Valentine, Jr., Judge. Affirmed.

A jury convicted Tranes Lamont Goines of two counts of second degree robbery (Pen. Code,<sup>1</sup> § 211) and found true allegations that Goines personally used a firearm in the robberies' commission. (§ 12022.53, subd. (b).) The jury found Goines not guilty of the remaining three counts of second degree robbery. Goines contends the trial court violated his Fourth Amendment right to be free from unreasonable searches and seizures

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise indicated.

when it denied his section 1538.5 motion to suppress. Specifically, he argues police did not have an objectively reasonable suspicion that he was involved in criminal activity, and thus his detention was unconstitutional. We affirm the judgment.

#### FACTUAL AND PROCEDURAL BACKGROUND

The facts are taken from the section 1538.5 suppression motion hearing.

On January 24, 2009, at approximately 10:30 or 10:45 a.m., San Diego Police Officer Michael Haley responded to a radio call regarding a bank robbery in progress at a Bank of America in the Del Cerro area of San Diego. The robbery was described as having multiple suspects. At some point, Officer Haley was informed one of the suspects was an African-American male. A global positioning system (GPS) tracking device had been placed with the money taken from the bank, which allowed the dispatcher to provide officers with street names on which the suspects were driving. Officer Haley waited in an area through which the dispatcher indicated the suspects would be coming so he could look at passing vehicles and make "mental note[s]" of the passing cars and their drivers. He then saw a silver Monte Carlo with large chrome wheels and tinted windows pass through the area. This location was approximately four to five miles from the robbery location and he made this observation approximately 10 to 25 minutes after receiving the initial radio call. The dispatcher indicated the suspects were heading east on the Interstate 8. Officer Haley followed, staying about an exit and a half behind where the dispatcher indicated the suspects were located. According to the dispatcher, the vehicle exited Interstate 8 at Main Street in El Cajon. Listening to the dispatch, Officer Haley learned the vehicle was near him. He then saw the same silver car, this time with

the driver's side window down, so that the officer momentarily saw that an African-American male was driving. When the driver saw Officer Haley, he had a "deer in the headlights" look, quickly turned, and accelerated rapidly. Officer Haley and another officer followed along with a police helicopter. Officer Haley testified it was clear the helicopter was radioing the location of the silver car. The car pulled into a cul-de-sac, parking on the southwest edge. The two officers then pulled into the cul-de-sac with at least five other units following.

As the officers entered the cul-de-sac, the driver of the silver car attempted to exit the vehicle, resulting in Officer Haley and the other officer conducting a "hot stop." Officer Haley explained that in a hot stop, police are taking control of the people in a vehicle, pointing their guns at them and giving verbal directions to assist officers in placing the suspects in handcuffs. A burgundy SUV was stopped on the north side of the cul-de-sac an estimated 50 feet from the silver car, but Officer Haley did not notice it until other officers made contact with its occupants. Officer Haley stated approximately 14 minutes had elapsed from the time of his initial spotting of the silver car to the hot stop.

Officer Chad Houseman, employed as a San Diego police officer for 24 years, came upon the scene as the stop of the silver car was taking place. When he arrived, he looked over and noticed the burgundy SUV and its two occupants, one of whom was Goines, with their hands raised "up on the ceiling of the car." Though at the time he had no information about a burgundy SUV, the officer's impression was that the two men were involved in the robbery, because he had received a dispatch call describing four

suspects in the bank robbery, and there were only two men in the silver car. Officer Houseman approached two El Cajon police officers standing near the burgundy SUV and brought it to their attention, but they told him they had not noticed the occupants. One of the two officers then yelled at Goines and the other occupant to get out of the car, and a third officer handcuffed them and had them lie face down on the ground until the hot stop ended. After Goines and the other suspects had been placed in the back of police cars, Officer Houseman looked into the burgundy SUV and saw a women's purse, which was one of the items described as taken from the robbery, as well as an open backpack with cash visible inside. Robbery detectives eventually searched the burgundy SUV.

After hearing from both officers, the court heard arguments from all counsel. It then addressed the legality of Goines's seizure, noting that Officer Houseman had thought Goines was involved because he came upon the scene of the hot stop and saw Goines raising his hands while it was in progress. In part responding to Goines's counsel's argument that the act of raising hands in a police situation was a survival action, the court asked whether it was reasonable for Office Houseman to think that Goines and the other man in the SUV were involved, observing it was a hostile situation where officers believed the robbery suspects were armed. It explained the circumstances presented not just an arrest but rather a "felony hot stop with a detention that is quickly going to become an arrest."<sup>2</sup> Acknowledging that only reasonable suspicion was required to

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<sup>2</sup> In part, the court reasoned: "The stop of the Monte Carlo appears to be clearly justified. Would a person of ordinary caution or prudence think that that vehicle is involved in the robbery, since it is kind of traced from the area of it? Yeah. [¶] The

lawfully detain, the court stated, "[I]s it reasonable for [the officers] to believe that [the two occupants in the burgundy car] were somehow involved to detain? Not probable cause to arrest, but detain." The court found there was reasonable suspicion, stating, "I believe the act of raising their hands . . . implies some knowledge or understanding regarding the circumstance because . . . there is no indication that somebody was pointing the gun at the two guys in the [burgundy] car." It also found a "plain-view issue" given the evidence that Officer Houseman was able to see a woman's purse and backpack with money through the SUV's tinted window. The court explained that the latter fact, in conjunction with the officers' reasonable basis to believe Goines and the other man was involved with the other suspects in the silver car, permitted it to conclude the police were lawfully able to detain Goines as well as search the burgundy car.

## DISCUSSION

Goines contends that under the Fourth Amendment of the federal Constitution, his detention was unlawful and therefore the court erred by denying his suppression motion and admitting evidence gained from the detention and subsequent search of the vehicle.

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issue, Mr. Chandler [Goines's defense counsel], where you say a guy similarly situated to your client [is] going to put [his] hands in the air as a survival action, I accept your representation that that's the way you believe it is. But when you come rolling up on a scene, cops all over the place, they are focused on these guys over here where they are clearly taken into custody. And then you look over here and there are guys 50 feet away and they have their hands up. You come rolling up on that. What are you going to think? [¶] The question is, are the guys who have the guns and who are detaining people, is it reasonable for them to think these guys were involved. [¶] The statement that there is no basis to detain them, while I believe is arguable, Mr. McMahan, I don't see it as an arrest situation, I see it as a felony hot stop. They are looking to see if these guys are involved. It will be a hostile situation because they believe that the robbers are armed. So this is—again, I see it as a felony hot stop with a detention that is quickly going to become an arrest."

He argues there was no reasonable suspicion that he had participated in the robbery, the act of raising his hands did not itself objectively show he participated in the robbery, and there was no other information the officers possessed to suggest he was involved in the robbery. As we will explain, we disagree.

### I. *Standard of Review*

" 'In reviewing a suppression ruling, "we defer to the superior court's express and implied factual findings if they are supported by substantial evidence, [but] we exercise our independent judgment in determining the legality of a search on the facts so found." ' [Citation.] ¶ Thus, while we ultimately exercise our independent judgment to determine the constitutional propriety of a search or seizure, we do so within the context of historical facts determined by the trial court. 'As the finder of fact . . . the superior court is vested with the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences in deciding whether a search is constitutionally unreasonable.' [Citation.] We review its factual findings ' " 'under the deferential substantial-evidence standard.' " ' [Citation.] Accordingly, '[w]e view the evidence in a light most favorable to the order denying the motion to suppress' [citation], and '[a]ny conflicts in the evidence are resolved in favor of the superior court's ruling.' [Citation.] Moreover, the reviewing court 'must accept the trial court's resolution of disputed facts and its assessment of credibility.' " (*People v. Tully* (2012) 54 Cal.4th 952, 979.)

We apply federal constitutional standards in assessing the reasonableness of governmental seizures. (*People v. Rogers* (2009) 46 Cal.4th 1136, 1156, fn. 8.) "On

appeal we consider the correctness of the trial court's ruling *itself*, not the correctness of the trial court's *reasons* for reaching its decision." (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 145 (*Letner*)). Accordingly, if the trial court's ruling is correct " ' "upon any theory of the law applicable to the case, it must be sustained regardless of the considerations which may have moved the trial court to its conclusion." ' ' " (*People v. Zapien* (1993) 4 Cal.4th 929, 976; *Letner*, at p. 145.) "In evaluating whether the fruits of a search or seizure should have been suppressed, we consider only the Fourth Amendment's prohibition on unreasonable searches and seizures." (*People v. Brendlin* (2008) 45 Cal.4th 262, 268.)

## II. *Legal Principles Governing Detentions*<sup>3</sup>

The legal principles governing detentions are well established. The U.S. Supreme Court first addressed this issue in the seminal case of *Terry v. Ohio* (1968) 392 U.S. 1

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<sup>3</sup> Goines does not argue on appeal that his stop was a de facto arrest without probable cause within the meaning of the Fourth Amendment. The fact officers ordered him out of the vehicle, handcuffed him and placed him in the back of a police car, even if at gunpoint, did not—under the circumstances present here—necessarily cause his detention to exceed the bounds of a valid investigatory stop. (See *People v. Celis* (2004) 33 Cal.4th 667, 675 ["stopping a suspect at gunpoint, handcuffing him, and making him sit on the ground for a short period, as occurred here, do not convert a detention into an arrest"; and such actions may be appropriate when the stop is of someone suspected of committing a felony]; *In re Anthony B.* (2008) 166 Cal.App.4th 435, 441-442 [cases in which handcuffing suspect did not convert detention into arrest involved violent felonies or reports indicating the suspect was armed, where officers had a reasonable basis to believe the detainee presented a physical threat to the officer or would flee]; *Gallegos v. City of Los Angeles* (9th Cir. 2002) 308 F.3d 987, 991 [under the totality of circumstances, the fact that a burglary suspect was ordered from his truck at gunpoint, handcuffed, placed in the back of a patrol car, and detained for between forty-five minutes and an hour, did not transform the officers' investigatory stop into an arrest; "[o]ur cases have made clear that an investigative detention does not automatically become an arrest when officers draw their guns".])

(*Terry*), where it held courts must "evaluate the reasonableness of a particular search or seizure in the light of the particular circumstances. And in making that assessment it is imperative that the facts be judged against an objective standard: [W]ould the facts available to the officer at the moment of the seizure or search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" (*Terry*, at pp. 21-22, fn. omitted.) A detention is permissible under the Fourth Amendment if the officer can point to specific and articulable facts that, when considered together with rational inferences from those facts, provide an objective manifestation that the person detained has been, is, or is about to be, engaged in criminal activity. (*U.S. v. Cortez* (1981) 449 U.S. 411, 417-418 & fn. 2; *Terry*, at p. 21; *Letner, supra*, 50 Cal.4th at p. 145.) In determining whether reasonable suspicion is present, the totality of the circumstances, or the whole picture, must be considered. (*U.S. v. Cortez, supra*, at p. 417.)

There are two elements of the totality of the circumstances determination, each of which must be met to find reasonable cause to detain. (*U.S. v. Cortez, supra*, 449 U.S. at p. 418.) The first is that the determination must be based on all of the circumstances and information, including information from police reports, objective observations, and consideration of the modes and patterns of certain criminals. (*Ibid; People v. Souza* (1994) 9 Cal.4th 224, 237.) Based on this information, law enforcement officers are permitted to draw inferences that "might well elude an untrained person." (*U.S. v. Cortez*, at p. 418; *U.S. v. Arvizu* (2002) 534 U.S. 266, 273; *Letner, supra*, 50 Cal.4th at p. 146.) The second element is that this determination must raise a suspicion that the particular individual being stopped is involved in the criminal activity. (*U.S. v. Cortez*, at

p. 418.) Reasonable suspicion may not be based on a mere hunch (*Terry, supra*, 392 U.S. at p. 27), but "the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard." (*U.S. v. Arvizu, supra*, at p. 274.)

Conduct consistent with innocent behavior can nonetheless provide reasonable suspicion of criminal activity when the acts are taken together. (*U.S. v. Sokolow* (1989) 490 U.S. 1, 9; *Terry, supra*, 392 U.S. at p. 22; *Letner, supra*, 50 Cal.4th at p. 146; *In re Tony C.* (1978) 21 Cal.3d 888, 894.) The California Supreme Court has held that innocent explanations of conduct do not preclude the possibility of finding reasonable suspicion, as a " 'principal function of [police] investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal . . . .' " (*People v. Souza, supra*, 9 Cal.4th at p. 233; *Letner*, at p. 148.) "Indeed, the United States Supreme Court has acknowledged that by allowing the police to act based upon conduct that was 'ambiguous and susceptible of an innocent explanation,' the court in *Terry* 'accept[ed] the risk that officers may stop innocent people.' " (*Letner*, at p. 147.)

These principles are amply demonstrated in *Terry* itself. There, an officer patrolling a downtown street in the middle of the day saw two men engaging in arguably innocent behavior: taking turns walking up and down a street, pausing and looking into a specific store window, and conferring with each other and a third man in between turns. (*Terry, supra*, 392 U.S. at pp. 5, 6.) The officer "had never seen the two men before, and he was unable to say precisely what first drew his eye to them." (*Id.* at p. 5.) However, as an detective who had patrolled for 30 years in the area looking for shoplifters and

pickpockets, the officer suspected the two men of " 'casing a job, a stick-up' " and consequently approached them, identified himself as an officer, asked their names and grabbed one of the men, patting down the outside of his clothes. (*Id.* at pp. 5, 7.) The officer discovered guns in both suspects' pockets and arrested them, after which they were charged with carrying concealed weapons. (*Id.* at p. 7.)

One of the suspects, Terry, moved to suppress evidence of the gun, contending the "frisk" was an unreasonable search and seizure. The court found that the officer's conduct was lawful and affirmed the conviction. It held there is a right to stop and frisk "where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous[.] . . . [H]e is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may be properly introduced in evidence against the person from whom they were taken." (*Terry, supra*, 392 U.S. at pp. 30-31.)

In *Terry*, the officers' safety was a key consideration: "[W]e cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest." (*Terry, supra*, 392 U.S. at p. 24.) The court concluded: "When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear

to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm." (*Ibid.*)

### III. *Application to the Facts*

Goines does not challenge the court's factual determinations and both parties agree Goines was detained within the meaning of the Fourth Amendment. The sole issue is whether, under all of the circumstances, Officer Houseman had a " 'particularized and objective basis' for suspecting legal wrongdoing." (*U.S. v. Arvizu, supra*, 534 U.S. at p. 273.)

We conclude based on a number of factors that the circumstances objectively gave rise to a reasonable basis for Officer Houseman to suspect that Goines was involved in criminal activity, and thus his detention was constitutionally valid. Officer Houseman arrived at the scene of the hot stop in progress only 24 to 39 minutes after a reported bank robbery, knowing four people were being sought in connection with that crime.

Temporal proximity to an incident is a relevant factor. (See *In re Carlos M.* (1990) 220 Cal.App.3d 372, 382 [presence near crime scene within one hour of crime report supported finding of reasonable suspicion].) The officer saw Goines and another man raising their hands in an act of surrender a mere fifty feet from the two robbery suspects while they were being subdued. Officer Houseman deduced that Goines and the other individual, along with the two suspects in the silver car, could be the four robbery suspects described by the dispatcher. He could reasonably assume Goines possessed or had access to a weapon given the nature of the crime.

Although an individual's "proximity to a person suspected of criminal conduct does not itself provide grounds also to suspect the defendant of wrongdoing," (*In re Carlos M., supra*, 220 Cal.App.3d at p. 382) Officer Houseman did not detain Goines solely because of proximity. Nevertheless, where, as here, a crime is known to have involved multiple suspects, proximity to a specifically described suspect shortly after the crime may provide reasonable grounds to detain for investigation. (*Ibid.*)<sup>4</sup> Concededly, the information Officer Houseman had was vague, and only described four suspects without further identification. But the burgundy SUV was only a short distance from the vehicle the helicopter had tracked via the GPS tracking device. This device provided a means to specifically identify the suspects in the silver vehicle since, at least to Officer Haley, it was clear that car had the device and he reasonably deduced its occupants were involved in the robbery.<sup>5</sup> Goines's proximity in the burgundy SUV to the suspect vehicle is a particularized factor relevant to assess the officers' conclusions.

Goines argues that the act of raising his hands is not sufficient to justify his detention, either by itself or under the totality of the circumstances. He maintains raising his hands was not a sign of guilt considering the number of officers at the scene, who were shouting at the suspects in the silver car to show their hands. We disagree. As we

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<sup>4</sup> See also *U.S. v. Lenoir* (2003) 318 F.3d 725, 729 [closeness in time and geographic location to a disturbance supported finding of suspicion]; compare, *People v. Durazo* (2004) 124 Cal.App.4th 728, 737 [detention of suspect matching description given four days prior was not supported by reasonable suspicion].)

<sup>5</sup> In fact, arguments of counsel during the suppression motion indicate that the bag with the transponder was located not in the silver car, but in the burgundy SUV.

have stated, an innocent explanation does not preclude a finding of reasonable suspicion sufficient to detain. (*U.S. v. Sokolow, supra*, 490 U.S. at p. 9; *Terry, supra*, 392 U.S. at p. 22; *People v. Souza, supra*, 9 Cal.4th at p. 233.) The act of raising his hands was reasonably viewed by Officer Houseman, a trained and experienced police officer, as an act of surrender that showed both guilt and, as the trial court stated, "knowledge or understanding regarding the circumstance." "[N]ervous, evasive behavior is a pertinent factor in determining reasonable suspicion." (*Illinois v. Wardlow* (2000) 528 U.S. 119, 124.) The Massachusetts district court in *U.S. v. Harty* (2007) 476 F.Supp.2d 17, relied upon by Goines, characterized the conduct of a suspect who threw his hands in the air while stating he was innocent as a "highly incriminating gesture." (*Id.* at p. 23.) This is particularly so here, where there is no evidence that any officer had their gun pointed at the burgundy car.

Finally, the need to ensure officer safety justified Goines's detention. The officers arrived at the scene of a vehicle containing bank robbery suspects shortly after the robbery took place. In *Terry*, the court found it reasonable for an officer to fear that suspects contemplating a "daylight robbery" would use weapons. (*Terry, supra*, 392 U.S. at p. 28.) It was likewise reasonable for Officer Houseman to conclude that a bank robbery suspect would have access to a nearby weapon. Because there were at least two officers near the burgundy car who had not noticed Goines or the other occupant, Goines's detention was reasonable to protect the safety of those officers, as well as the other officers at the scene. (See *U.S. v. Johnson* (2010) 592 F.3d 442, 453 ["An officer with reasonable suspicion that the occupants of a vehicle are armed and dangerous does

not act unreasonably by drawing his weapon, ordering the occupants out of the vehicle, and handcuffing them until the scene is secured"].) In short, in this case, a "reasonably prudent [officer] in the circumstances would be warranted in the belief that his safety or that of others was in danger," permitting both Goines's detention and a reasonable search for weapons. (*Terry*, at p. 27; *People v. Glaser* (1995) 11 Cal.4th 354, 364 [the government interest of officer safety will justify a detention].)

Although the above-mentioned facts, either by themselves or combined in some fashion, may not have alerted an untrained civilian, Officer Houseman was permitted to draw inferences based upon his 24 years of experience. (*U.S. v. Cortez*, *supra*, 449 U.S. at p. 418; *U.S. v. Arvizu*, *supra*, 534 U.S. 266, 273.) Under all of the circumstances, Officer Houseman's suspicion rose beyond a mere hunch. (*U.S. v. Cortez*, *supra*, at pp. 417-418 & fn. 2; *Terry*, *supra*, 392 U.S. at p. 21.) The short amount of time from the robbery to Goines's detention, his proximity to the hot stop, the number of reported suspects, and Goines's act of raising his hands provided Officer Houseman with " 'some objective manifestation' " that Goines was involved in criminal activity. (*People v. Celis*, *supra*, 33 Cal.4th at p. 674; *U.S. v. Cortez*, *supra*, 449 U.S. 411, 417-418 & fn. 2; *Terry*, at p. 21.) And the need to ensure the safety of other officers in light of the seriousness of the crime provided a legitimate basis for this detention. The combination of factors present here satisfied the " 'minimal level of objective justification' " (*U.S. v. Sokolow*, *supra*, 490 U.S. at p. 7) required to stop Goines and investigate his involvement in bank robbery. Therefore, Goines's detention as well as the officers' protective

examination of the burgundy SUV's interior,<sup>6</sup> was lawful, and the court correctly denied Goines's motion to suppress.

#### DISPOSITION

The judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

NARES, Acting P. J.

AARON, J.

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<sup>6</sup> Goines does not argue that even if his detention is valid under the Fourth Amendment, Officer Houseman's protective inspection of his vehicle (looking through the passenger window) was unconstitutional. However, that search can be upheld under the "plain-view" doctrine, under which "if police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant." (*Minnesota v. Dickerson* (1993) 508 U.S. 366, 374-375; see also *Michigan v. Long* (1983) 463 U.S. 1032, 1049 [given the hazardous nature of roadside encounters, where police have reasonable suspicion based on specific and articulable facts to believe that a driver may be armed and dangerous, they may conduct a protective search for weapons not only of the driver's person but also of the passenger compartment of the automobile].)