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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MARCUS DUANE TURNER,

Defendant and Appellant.

D061353

(Super. Ct. No. SCN290060)

APPEAL from a judgment of the Superior Court of San Diego County, Robert J. Kearney and David G. Brown, Judges. Affirmed.

A jury convicted Marcus Duane Turner of possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)). The court thereafter placed Turner on Proposition 36 probation.

Prior to the jury trial, Turner brought a motion for discovery under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*) and a motion to suppress the evidence found following his arrest pursuant to Penal Code¹ section 1538.5.

Following an *in camera* review of police department records, the court found no discoverable material existed in the files. The court then conducted an evidentiary hearing on Turner's section 1538.5 motion and ultimately denied the motion.

Turner appeals contending the trial court erred in denying his motion to suppress evidence. He also asks this court to review the sealed transcript of the *Pitchess* in camera hearing to determine whether the court erred in failing to provide discovery of any of the police officer's personnel records.

We have reviewed the record and conclude the court correctly denied the motion to suppress evidence. Regarding the *Pitchess* motion, we have reviewed the sealed transcript and find no error by the trial court. Accordingly, we will affirm the judgment.

STATEMENT OF FACTS

Turner does not challenge the sufficiency of the evidence to support his conviction. His challenge on appeal is based on the claimed, erroneous denial of his motion to suppress. For some reason, both parties have cited to the record of the trial, and not the suppression motion. The court's ruling on the motion, however, is based on the testimony which was heard on October 7, 2011. The evidence taken at trial is not

¹ All further statutory references are to the Penal Code unless otherwise specified.

relevant to the trial court's decision on the motion. Accordingly, the facts we will set forth here are from the motion hearing transcript.

At about 7:50 p.m. on April 1, 2011, an Oceanside Police officer stopped the car in which Turner was driving. The car was stopped because the officer noted it had a non-functioning brake light. When the officer approached the car he recognized Turner from prior law enforcement encounters.

The officer observed what he believed were symptoms of drug intoxication. He noted Turner's speech was very rapid, his pupils were constricted, and he had body tremors. The officer checked Turner's pulse and found it was rapid.

Turner was removed from his car and the officer conducted what he referred to as a "Romberg" test. That test involved having Turner hold his head back, close his eyes and try to estimate 30 seconds of time. The officer observed that Turner experienced body tremors and tremors of his eyelids. Turner was slightly off in his time estimate, having estimated 30 seconds had passed when only 25 seconds had passed. The officer also shined his penlight directly into Turner's eyes and observed no pupil reaction to the light.

Based on his observations of Turner's condition and the officer's training, he concluded that Turner was under the influence of a controlled substance within the meaning of Health and Safety Code section 11550 and therefore placed Turner under arrest. Turner was then taken to the police department. While there Turner was directed to take off his shoes. He did so by kicking the shoes off. In the process a small bundle of methamphetamine flew out of one of the shoes.

Defense

Turner called an acquaintance, Everette Gaston, to testify. Gaston testified that following Turner's arrest he picked up Turner at a bail bond office. Gaston drove Turner to his car. There they inspected the brake lights and found both were functioning, although one was dimmer than the other.

DISCUSSION

I

THE MOTION TO SUPPRESS EVIDENCE

Turner contends the trial court erred in denying his Fourth Amendment motion to suppress the methamphetamine which was seized following his arrest. Viewing the evidence in the light most favorable to his own position, Turner argues the officer did not have probable cause to believe he was under the influence of a controlled substance. We disagree and conclude the trial court's decision was correct.

We start with a statement of what Turner does not challenge on Fourth Amendment grounds. He does not contend the stop of his car was unreasonable. Nor does he contend that the discovery of the bindle from his shoe was the product of an independent Fourth Amendment violation. Rather, the only search and seizure challenge we find in the briefs is whether the officer had probable cause to arrest for violation of Health and Safety Code section 11550. With these limitations in mind we will turn to a discussion of Turner's arrest.

A. Legal Principles

When a trial court rules on a motion to suppress under section 1538.5, the court must first determine the historical facts surrounding the action taken by police. Then the trial court must apply the appropriate Fourth Amendment principles to those facts to determine whether the defendant's motion should be granted. Accordingly, when we review a trial court's decision in such cases, we review the factual determinations under the substantial evidence standard of review. (*People v. Ayala* (2000) 24 Cal.4th 243, 279.) We exercise our independent judgment on the question of whether, given the historical facts, the search or seizure was reasonable. (*People v. Ramos* (2004) 34 Cal.4th 494, 505.)

A police officer may arrest a person when the officer has probable cause to believe the person has committed a specific crime. (§ 836, subd. (a)(1).) In order for a person to be "under the influence" of a controlled substance within the meaning of Health and Safety Code section 11550, the person's actions and appearance must demonstrate, "in any detectable manner," physical symptoms that show the influence of a controlled substance. (*People v. Guitierrez* (1977) 72 Cal.App.3d 397, 402.)

The question underlying the challenge to this arrest is whether the officer had probable cause to believe Turner was "under the influence." Probable cause is not an exact calculation. Rather it is an evaluation the courts make, under the totality of the circumstances. (*Illinois v. Gates* (1983) 462 U.S. 213, 230-231 (*Gates*).) Among the circumstances that must be considered are the officer's observations in light of the officer's training and experience. Thus facts that may appear innocent to the layperson,

may prove suspicious in the context of the officer's expertise. (*People v. Guajardo* (1994) 23 Cal.App.4th 1738, 1742.)

B. Analysis

In his challenge to the court's finding of probable cause, Turner examines each fact separately, arguing there could be an innocent explanation for each fact. Having found possible explanations for each fact, he then argues the totality of the facts do not establish probable cause. We think the argument is flawed.

While it could be that Turner was agitated by possible police harassment, which in turn could have elevated his pulse and his speech, it is not our role to reweigh the evidence relied upon by the trial court. Nor does the totality of circumstances standard permit us to review each fact in isolation, thus ignoring the effect of all of the facts taken together.

While our review of the legal analysis is de novo, we are not free to ignore the facts as impliedly found by the court. Significantly, the court in *Gates, supra*, 462 U.S. 213, made clear that courts review the probable cause determination in light of all of the circumstances. To the extent Turner's differing interpretations of the facts present conflicts with the trial court's implied findings, we must resolve such conflict in "the manner most favorable to the [superior] court's disposition" (*People v. Martin* (1973) 9 Cal.3d 687, 692.)

In this case, the officer's personal observations, taken in light of his training and experience, could reasonably cause him to strongly suspect that Turner was under the influence of a controlled substance at the time of his traffic stop. Turner's physical

symptoms and behavior were all consistent with such conclusion. The fact that there could have been possible innocent explanations for each individual observation does not negate a finding of probable cause. The probable cause standard under the Fourth Amendment is a weighing of probabilities and is not designed to prove guilt of a suspect. Rather, the standard serves as a measure of the objective reasonableness of a governmental intrusion into a reasonable expectation of privacy. (*Brinegar v. United States* (1949) 338 U.S. 160, 176.)

Here, the trial court correctly analyzed the facts of the stop and subsequent arrest and properly concluded there was probable cause for the arrest. Accordingly, the court correctly denied Turner's motion to suppress evidence.

II

THE PITCHESS MOTION

As we have noted, Turner filed a motion under *Pitchess, supra*, 11 Cal.3d 531, to obtain discovery of material in the arresting officer's personnel file. The trial court granted Turner's request for the court to conduct an in camera inspection of the officer's personnel files from the Oceanside Police Department. The parties agree that this court should review the sealed transcript to determine if the trial court correctly determined that the files did not contain any material that would be appropriate to provide to the defense. Accordingly, we ordered that the in camera hearing be transcribed and forwarded to this court under seal. We have reviewed the sealed transcript.

Based upon our review of the transcript of the in camera hearing, we are satisfied that the trial judge correctly determined there was no material in the police department's

files that should be disclosed under the *Pitchess* rule. It is clear that the judge carefully reviewed all available departmental files and properly determined none of their content related to the issues raised in the *Pitchess* motion. Accordingly, we find no error in the court's decision.

DISPOSITION

The judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

O'ROURKE, J.