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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDY CHAVEZ,

Defendant and Appellant.

E057506

(Super.Ct.No. FVA1100569)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cara D. Hutson,
Judge. Affirmed.

Nancy S. Brandt, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland, and Stephanie
H. Chow, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

A jury convicted defendant Andy Chavez of possession of 11.65 grams of methamphetamine for sale. (Health & Saf. Code, § 11378.) The trial court sentenced defendant to three years of formal probation.

On appeal, defendant challenges the partial denial of his motion to suppress. (Pen. Code, § 1538.5)¹ In the alternative, he argues insufficient evidence supports his conviction. We reject these contentions and affirm the judgment.

II

MOTION TO SUPPRESS

A. The Preliminary Hearing and Motion to Suppress

We summarize the facts elicited from Fontana Police Officer Samuel Siggson at the preliminary hearing and officer Christopher Burns and Siggson at the hearing on the motion to suppress. Siggson was trained in police narcotics investigation.

On February 20, 2011, Burns and Siggson responded to a report about a woman creating a public disturbance in a trailer park known for drug activity. At that location, they observed two men in a Volkswagen. The driver, William Lawson, took notice of the officers and spoke to the passenger, identified as defendant, who reached down and appeared to make furtive movements, hiding something under the seat. Burns pulled out his gun and commanded defendant to show his hands because he was concerned

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

defendant might have a weapon. When Burns ordered defendant out of the car, Burns saw defendant had an open 24-ounce beer between his feet on the floorboard.

Defendant consented to a search of his person. Defendant was carrying about \$1,250. Defendant's cell phone displayed a series of messages about selling drugs. Defendant waived his constitutional rights and said that the officers had interrupted a "dope deal."

Larson, the driver, consented to the car being searched. Behind the passenger seat, Siggson located a jar containing two baggies of methamphetamine and other plastic packaging. Siggson's opinion was that defendant possessed a usable quantity of methamphetamine for sale.

In a written motion to suppress, defendant argued that his detention and arrest were illegal and all physical evidence and defendant's statements should be suppressed. The prosecution responded that the detention was justified and defendant had no standing as a passenger to contest the vehicle search when the car owner had consented.

In oral argument, defense counsel argued that furtive gestures and the absence of any other facts were insufficient to support a detention. The prosecution asserted the officers were justified when investigating suspicious activity in a high-crime neighborhood.

Initially, the court granted the motion to suppress but subsequently revised its ruling to hold that the detention of defendant was illegal but he could not challenge the search of the car and consequently the admission of the methamphetamine. The court commented: "None of the cases is squarely on point with our unusual facts where you

have an invalid traffic stop, a subsequent search of a car that doesn't belong to the defendant, and then drugs are found in that car.”

B. The Standard of Review

The standard for appellate review of a ruling on a motion to suppress is well-known:

“In reviewing the action of the lower courts, we will uphold those factual findings of the trial court that are supported by substantial evidence. The question of whether a search was unreasonable, however, is a question of law. On that issue, we exercise ‘independent judgment.’ [Citations.] Because the officers lacked a warrant, the People bore the burden of establishing either that no search occurred, or that the search undertaken by the officers was justified by some exception to the warrant requirement. [Citations.] [¶] The ‘ultimate standard set forth in the Fourth Amendment is reasonableness’ [citation], and, after *Katz v. United States* (1967) 389 U.S. 347 (*Katz*), we ask two threshold questions. First, did the defendant exhibit a subjective expectation of privacy? Second, is such an expectation objectively reasonable, that is, is the expectation that one society is willing to recognize as reasonable? [Citations.]” (*People v. Camacho* (2000) 23 Cal.4th 824, 830-831.)

C. Defendant's Standing

The issue on appeal is not whether defendant was illegally detained—which is not disputed—but whether the trial court erred in ruling that defendant could not object to the search of the VW—which he did not own. A passenger usually has no legitimate

expectation of privacy in the search or seizure of a vehicle. (*People v. Valdez* (2004) 32 Cal.4th 73, 122; *Brendlin v. California* (2007) 551 U.S. 249, 253-259.)

In *Rakas v. Illinois* (1978) 439 U.S. 128, police stopped a vehicle driven by robbery suspects, searched the car, and found bullets in the glove compartment and a firearm under the front passenger seat. The United States Supreme Court held: “Judged by the foregoing analysis, petitioners’ claims must fail. They asserted neither a property nor a possessory interest in the automobile, nor an interest in the property seized. And as we have previously indicated, the fact that they were ‘legitimately on [the] premises’ in the sense that they were in the car with the permission of its owner is not determinative of whether they had a legitimate expectation of privacy in the particular areas of the automobile searched.” (*Id.* at p. 148; see also *People v. Root* (1985) 172 Cal.App.3d 774, 778.) Applying *Rakas* here, defendant cannot claim his Fourth Amendment rights were infringed by a search of a third person’s property. Defendant had no right of privacy in Larson’s VW. (*Rakas*, at pp. 134, 147-149.)

Defendant relies on *Brendlin v. California*, *supra*, 551 U.S. at page 251, and *United States v. Twilley* (9th Cir. 2000) 222 F.3d 1092, maintaining a passenger may challenge the initial stop preceding a vehicle search. In *Brendlin*, the defendant did not challenge the search of a third party’s vehicle but claimed only that the traffic stop was an unlawful seizure of his person. (*Brendlin*, at p. 253.) Here the trial court agreed that defendant was illegally detained. The issue in this case is whether the methamphetamine found in the legal search of the VW should be suppressed.

Twilley is nonbinding federal authority. The *Twilley* court found that defendant could seek suppression of evidence discovered in a vehicle as the fruit of an unlawful stop of a vehicle. (*United States v. Twilley, supra*, 222 F.3d at p. 1162.) Here, however, the VW was searched with the owner’s express consent.² Furthermore, *Twilley* has been substantially abrogated by the Ninth Circuit in the subsequent case of *United States v. Pulliam* (9th. Cir. 2005) 405 F.3d 782, 788-789: “If a passenger is unlawfully detained after the stop, he can of course seek to suppress evidence that is the product of that invasion of his own rights. But a passenger with no possessory interest in a vehicle usually cannot object to *its* continued detention or suppress the fruits of that detention, because ‘Fourth Amendment rights are personal rights which . . . may not be vicariously asserted.’ *Rakas*, 439 U.S. at 133-34 (internal quotation marks omitted).” In this case, defendant could not object to the detention or search of Larson’s vehicle and the evidence obtained from the search is admissible.

III

SUFFICIENCY OF EVIDENCE

In reviewing a sufficiency of the evidence claim, an appellate court considers “the whole record in the light most favorable to the judgment” and decide “whether it discloses substantial evidence . . . such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Johnson* (1980) 26 Cal.3d 557,

² In his reply brief, defendant argues for the first time that the driver’s consent was coerced and involuntary. Not only has defendant failed to raise this issue before but the record offers no indication that Larson was at all reluctant to consent to the search.

578; *People v. Felix* (2009) 172 Cal.App.4th 1618, 1624.) Ample evidence supports the conclusion defendant possessed the methamphetamine for sale.

Elements of possession for sale of a controlled substance are: (1) the defendant possessed the substance; (2) the defendant knew of its presence; (3) the defendant knew of the substance's nature or character as a controlled substance; (4) when the defendant possessed the controlled substance, he intended to sell it; (5) the controlled substance was methamphetamine; and (6) the controlled substance was in a usable amount. (CALCRIM No. 2302.) "Each of these elements may be established circumstantially." (*People v. Camp* (1980) 104 Cal.App.3d 244, 247-248; *People v. Smith* (2005) 37 Cal.4th 733, 738.)

Defendant asserts there is insufficient evidence that he exerted dominion and control over the methamphetamine with knowledge of its presence and nature. When the contraband is immediately and exclusively accessible to the accused and subject to his dominion and control, possession may be based upon either actual or constructive possession of the substance. (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 831; *People v. Rogers* (1971) 5 Cal.3d 129, 134; *People v. Eckstrom* (1986) 187 Cal.App.3d 323, 331; *People v. Rushing* (1989) 209 Cal.App.3d 618, 622; *People v. Allen* (1967) 254 Cal.App.2d 597, 603.)

Here the officers found the contraband behind or beneath the passenger seat occupied by defendant. Although Larson and defendant were both in the vehicle, the jury was not precluded from deciding that defendant was in possession of the methamphetamine. The jury could reasonably conclude defendant controlled the

methamphetamine found near his seat. Circumstantial evidence suffices. (*People v. Palaschak* (1995) 9 Cal.4th 1236, 1238.)

Furthermore, both officers testified that defendant occupied the front passenger seat, closest to the methamphetamine. When Larson consented to the search, he said there was nothing illegal in his car. The jury could reject Larson's inconsistent trial testimony, in which he contradicted his prior statements. (*People v. Barnes* (1986) 42 Cal.3d 284, 303-304.)

In *People v. White* (1969) 71 Cal.2d 80, 83, the court held: “[T]he mere possession of a narcotic constitutes substantial evidence that the possessor of the narcotic knew of its nature.” Possession of a large quantity of a controlled substance alone constitutes circumstantial evidence of possession for sale. (*People v. Grant* (1969) 1 Cal.App.3d 563, 570.) Additionally, experienced officers may give their opinion that drugs are held for purposes of sale. (*People v. Newman* (1971) 5 Cal.3d 48, 53; see *People v. Harris* (2000) 83 Cal.App.4th 371, 374-375.)

Here, officers found 11.65 grams of methamphetamine, as well as packaging, in defendant's possession. Officer Siggson, a narcotics expert, stated he believed the methamphetamine was possessed for sale because the quantity was “beyond the amount of a normal [narcotics] user would generally carry.” A single hit is usually .01 or .02 grams of methamphetamine. Siggson also stated narcotics dealers will carry packaging for distributing their narcotics. Larson told Siggson he intended to buy drugs from defendant. Given defendant's possession of the methamphetamine and his apparent attempt to conceal the drugs when he noticed the officers, the jury could reasonably find

that defendant knew of its presence and nature and he possessed the methamphetamine for sale.

IV

DISPOSITION

The trial court did not err in its ruling on defendant's motion to suppress.

Sufficient evidence supports defendant's conviction.

We affirm the judgment.

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CODRINGTON
J.

We concur:

RAMIREZ
P. J.

MILLER
J.