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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.

ROBERT PAUL NIETO,

Defendant and Appellant.

E058172

(Super.Ct.No. FSB1204724)

OPINION

APPEAL from the Superior Court of San Bernardino County. Bridgid M.

McCann, Judge. Affirmed.

Susan S. Bauguess, 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, A. Natasha Cortina and Paige B. Hazard, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Robert Paul Nieto was charged by amended information with possession of a firearm by a felon (Pen. Code, § 29800, subd. (a), count 1), possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a), count 2), possession of burglary tools (Pen. Code, § 466, subd. (a), count 3), possession of ammunition (Pen. Code, § 30305, subd. (a)(1), count 4), and child abuse (Pen. Code, § 273a, subd. (a), count 5). It was also alleged that defendant had suffered one prior strike conviction (Pen. Code, §§ 1170.12, subds. (a)-(d) & 667, subds. (b)-(i)) and two prison priors (Pen. Code, § 667.5, subd. (b)). Defendant moved to suppress the prosecution's evidence against him pursuant to Penal Code section 1538.5.¹ The trial court denied the motion. Then, pursuant to a plea agreement, defendant pled guilty to count 1 and admitted the prior strike conviction in exchange for a sentence of 32 months in state prison and the dismissal of the remaining counts and allegations. The trial court imposed the agreed-upon sentence.

Defendant now contends that the trial court erred in denying his motion to suppress evidence. We affirm.

FACTUAL BACKGROUND

The following statement of facts is derived from the hearing on the motion to suppress: On October 18, 2012, at approximately 2:00 p.m., Officers Jesus Vega and Elizabeth Contreras were on patrol when a black SUV (the car) made a left turn in front

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

of them. Both officers noticed that the car had tinted windows. Officer Vega testified that he saw the driver, later identified as defendant, through the windshield. Officer Vega also saw him through the tinted side window, but could not make out his features through that window. Defendant pulled into a parking lot, and the officers followed. Officer Contreras got out of the patrol car and approached the passenger's side of the car. Officer Contreras conducted the initial questioning of defendant and the passenger, Francesca Barrios, who said she was the owner of the car. Officer Contreras asked them if there was anything illegal in the car, such as drugs or weapons, and they both said no. Officer Vega then approached the driver's side of the car. By this time, the window was rolled down. Officer Vega asked defendant if he had a driver's license and if he was on probation or parole. Defendant said that he was unlicensed and that he was on probation. Officer Vega had defendant exit the car and then told defendant he was going to search him to make sure he was complying with his probation terms. Defendant did not object. As defendant was getting out of the car, he spontaneously said that if anything was found, it belonged to him. Officer Vega searched him and then arrested him for driving without a license. Officer Vega put defendant in the patrol car and then let his police dog search the car. After the dog was finished, Officer Vega searched the areas of the car where the dog had shown some interest, but he did not find anything. Meanwhile, Officer Contreras got Barrios out of the car and patted her down. Barrios told the officer that she had a methamphetamine pipe in her purse, which was still inside the car. Officer Contreras asked Barrios for consent to search the car and explained that she was going to

search for weapons or narcotics. Barrios consented. Officer Contreras searched the car and found a black backpack behind the driver's seat. Barrios said the backpack belonged to defendant. The backpack contained a loaded handgun and ammunition, several pills inside a matchbox, and burglary tools.

At the suppression hearing, defense counsel argued that the officers were not justified in pulling defendant over for having tinted windows, since windows are allowed to be tinted to a certain extent. He also argued that the officers never got consent from defendant to search the backpack, and Barrios's consent did not justify the search, since she said the backpack belonged to defendant. Defense counsel further argued that the search was not a probation search, since the officers did not know if defendant had any search terms as part of his probation.

The prosecution argued that the officers testified that the windows were tinted, and that the stop ensued from there. Furthermore, defendant told the officer he was on probation, and when the officer said he was going to search defendant to see if he was in compliance with his terms, defendant did not object. Thus, defendant essentially admitted that he had search terms. The prosecution asserted that Barrios was the owner of the car, and she gave consent to search it. The prosecution further argued that the search qualified as a search incident to arrest.

The court made several findings before ruling on the motion to suppress. Regarding the traffic stop, the court stated that it had "no information that [the windows] were not improperly tinted." Based on the officer's testimony that he could not tell the

driver's facial features or identify the person in the car, the court inferred that "there [was] at least reasonable suspicion to investigate that further." The court held that the stop was justified and noted that *People v. Niebauer* (1989) 214 Cal.App.3d 1278 (*Niebauer*), which was cited by defendant, did not require a different result.

The court noted that defendant was arrested for driving without a license and that he was removed from the car and had no access to the backpack. Thus, the court determined that the search of the backpack was not a search incident to arrest.

The court further found that defendant did not give consent to search the car; however, the person who indicated that the car belonged to her did consent to the search. The court specifically found that Barrios was the person who was in possession and control of the car after defendant was removed and arrested, and that she gave consent to search the car. As such, the court stated that it did not need to decide the issue of whether a probation search had been shown. Regarding the backpack, the court asserted: "The backpack is located within the car, and while it is in the care and control of [Barrios] to be able to give that consent, the Court will find that that would be inferred. The Court will further find that by that point, the defendant's probation status having been confirmed to a degree would further justify [the search]." The court then denied the motion.

ANALYSIS

The Court Properly Denied Defendant's Motion to Suppress Evidence

Defendant argues that his detention was unlawful because the officers did not have probable cause to believe a traffic violation had occurred on the basis of the tinted windows. He further contends that the search of his backpack was unlawful. He concludes that all evidence found as a result of the detention and search should have been suppressed. We disagree.

A. Standard of Review

“As the finder of fact in a proceeding to suppress evidence [Citation], 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.]” (*People v. Woods* (1999) 21 Cal.4th 668, 673 (*Woods*)). Accordingly, on review of a motion to suppress, “‘all factual conflicts must be resolved in the manner most favorable to the [superior] court’s disposition on the [suppression] motion.’ [Citation.] But while we defer to the superior court’s express and implied factual findings if they are supported by substantial evidence, we exercise our independent judgment in determining the legality of a search on the facts so found. [Citations.]” (*Id.* at pp. 673-674.)

B. The Traffic Stop Was Valid

Defendant first argues that the officers had no probable cause to stop the car based on it having tinted windows. He asserts that Officer Vega could clearly see him through

the windows, with the exception of his facial features and, thus, there was no violation of California law. Defendant also contends that there was no justification for the stop based on him driving without a license. At the outset, we note that the officers did not stop defendant for driving without a license.

“[A]n officer may stop and detain a motorist on reasonable suspicion that the driver has violated the law.” (*People v. Wells* (2006) 38 Cal.4th 1078, 1082.) The officers here only needed reasonable suspicion to stop defendant’s car, not probable cause, as defendant claims. “Reasonable suspicion is a lesser standard than probable cause, and can arise from less reliable information than required for probable cause, including an anonymous tip. [Citation.] But to be reasonable, the officer’s suspicion must be supported by some specific, articulable facts that are ‘reasonably “consistent with criminal activity.”’ [Citation.]” (*Id.* at p. 1083.)

Vehicle Code section 26708.5, subdivision (a), provides that “[n]o person shall place, install, affix, or apply any transparent material upon the windshield, or side or rear windows, of any motor vehicle if the material alters the color or reduces the light transmittance of the windshield or side or rear windows, except as provided in subdivision (b), (c), or (d) of Section 26708.” Any such material must have “a minimum visible light transmittance of 88 percent.” (Veh. Code, § 26708, subd. (d)(1).)

In this case, the officers had reasonable suspicion to believe that defendant was in violation of the law. Both officers observed and testified that the windows on the car defendant was driving were tinted. Officer Vega said he saw the driver through the

windshield before the car turned in front of the officers. He also said he could “see the person through the tinted [side] window.” When asked if he could identify defendant through the tinted window, Officer Vega said he saw a person driving the car, but he could not make out his features. We note that the trial court found there was “no information that [the windows] were *not* improperly tinted.” (Italics added.) Considering that the officer could not tell the driver’s facial features through the tinted window, we agree with the trial court’s conclusion that the officers had reasonable suspicion that would justify an investigatory stop. (See *Niebauer, supra*, 214 Cal.App.3d at pp. 1292-1293, fn. 10 [the trial court found that the officer was justified in stopping a car because its windows were “darker than normal and he could only see [the driver’s] outline through the window”].)

Therefore, the traffic stop was valid since the officers had reasonable suspicion that defendant had violated the Vehicle Code.

C. The Owner Gave Consent to Search Her Car and its Contents

The trial court ruled that the search of the car was lawful, based on the consent of Barrios, the owner of the car. The court further reasoned that Barrios was in sole possession and control of the car after defendant’s removal and arrest. Defendant argues that Barrios’s consent did not extend to the backpack since both he and Barrios told the officer that it belonged to him. We conclude that the court properly admitted the evidence of the backpack and its contents based on Barrios’s consent.

“The Fourth Amendment guarantees ‘[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures’ and provides that ‘no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.’ [Citation.] A search conducted without a warrant is unreasonable per se under the Fourth Amendment unless it falls within one of the ‘specifically established and well-delineated exceptions.’ [Citations.] It is ‘well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.’ [Citations.]” (*Woods, supra*, 21 Cal.4th at p. 674.)

“The United States Supreme Court has explained the basis for valid third party consent to a search as ‘rest[ing] . . . on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.’ [Citation.] Thus, objects left in an area of common use or control may be within the scope of the consent given by a third party for a search of the common area. [Citation.]” (*People v. Clark* (1993) 5 Cal.4th 950, 979, fn. omitted (*Clark*), overruled on other grounds as stated in *People v. Doolin* (2009) 45 Cal.4th 390, 421.)

In *Clark, supra*, 5 Cal.4th 950, the police were investigating a murder. They received permission from the owner of car to search it for anything that might help in the

investigation. (*Id.* at p. 978.) On the back seat of the car, they found some clothes that belonged to the defendant. (*Ibid.*) An officer “removed the clothes from the interior of the car into the sunlight and noticed what appeared to be blood spatters” (*Ibid.*) The Supreme Court held that the search of the contents of the car was within the scope of the consent granted to the police and, by leaving his clothes on the seat of the car, the defendant had no legitimate privacy interest as against the owner or the owner’s invitees. (*Id.* at pp. 979-980.)

Here, defendant was arrested and placed in the patrol car. Meanwhile, Officer Contreras got Barrios out of the car. Barrios told Officer Contreras that she had a methamphetamine pipe in her purse, which was still in the car. Barrios told the officer she was the owner of the car. Officer Contreras decided to search the car and explained to Barrios that she was going to search for narcotics or weapons. As the owner of the car, Barrios “unquestionably had a possessory interest in it.” (*Clark, supra*, 5 Cal.4th at p. 979.) She gave her consent for the police to search the car. By leaving his backpack on the seat of Barrios’s car, defendant assumed the risk that Barrios would consent to a search of her car and its contents. (*Ibid.*) Moreover, as the trial court here noted, after defendant was removed and arrested, Barrios had sole possession and control of the car. “The consent of one person with common or superior authority over the area to be searched is all that is required; the consent of other interested parties is unnecessary. [Citations.]” (*Id.* at p. 980.) Barrios had superior authority over the car and its contents.

The search of the contents of the car, including the backpack, was within the scope of the consent she granted to the police. (See *Id.* at p. 980.)

Defendant acknowledges that in *Clark, supra*, 5 Cal.4th 950, the court held that the consent of the owner of the car extended to the search of the defendant's clothes, which were sitting on the back seat. However, relying on *People v. Stage* (1970) 7 Cal.App.3d 681 (*Stage*), he contends that an owner's consent to search does not include a search of the belongings of passengers, if the officer had prior knowledge that those items belonged to a third party. *Stage* is distinguishable. In that case, an officer found contraband in the pocket of a jacket that he knew belonged to the defendant, and not the car owner who provided consent to search the car. (*Id.* at p. 683.) However, the court in *Stage* held, in part, that the evidence should have been suppressed because the officer had no probable cause to search the car or the jacket. (*Id.* at pp. 683-684.)

Here, in contrast, there was probable cause to search for contraband in the car, since Barrios admitted that she had a methamphetamine pipe in her purse, which was in the car. “‘If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of *every part of the vehicle and its contents* that may conceal the object of the search.’ [Citation.]” (*Wyoming v. Houghton* (1999) 526 U.S. 295, 301 (*Houghton*)). Moreover, where there is probable cause to search for contraband in a car, “it is reasonable for police officers . . . to examine packages and containers without a showing of individualized probable cause for each one. A passenger's personal belongings, just like the driver's belongings or containers attached to the car like a glove compartment,

are ‘in’ the car, and the officer has probable cause to search for contraband *in* the car.” (*Id.* at p. 302.) Furthermore, even though Barrios said that the backpack belonged to defendant, it was reasonable for the officer to suspect that Barrios and defendant could have been “engaged in a common enterprise . . . and [had] the same interest in concealing the fruits or the evidence of their wrongdoing.” (*Id.* at p. 304.)

Defendant also relies upon *People v. Cruz* (1964) 61 Cal.2d 861 (*Cruz*), but that case is also distinguishable. In *Cruz*, a tenant and a guest of an apartment where the defendant was temporarily staying gave officers consent to “look around” the apartment. (*Id.* at pp. 864, 866.) The apartment had a “conglomeration of goods” that belonged to several people, including the defendant. (*Id.* at p. 867.) An officer searched through boxes and suitcases, and he opened the defendant’s suitcase and discovered that it contained contraband. (*Id.* at p. 864.) The Supreme Court held that the “general consent” given by the tenant and guest did not authorize the officer to open and search suitcases and boxes that he had been informed were the property of third persons. (*Id.* at pp. 866-867.)

In contrast to *Cruz*, *supra*, 61 Cal.2d 861, the consent that Barrios gave was not a general consent to “look around.” Officer Contreras specifically asked Barrios for consent to search the car for weapons or narcotics. The officer was justified in searching the backpack, since it could easily conceal the objects of the search. (See *Houghton*, *supra*, 526 U.S. at p. 301.)

We further note that the trial court here found that defendant's probation status was confirmed during the search, which further justified the search. Although defendant claims that Officer Vega did not confirm defendant's probation status until *after* the search, the record clearly shows that Officer Vega verified defendant's probation status *during* the search.

In sum, the police officers had reasonable suspicion to stop defendant's car, and the search of his backpack was valid based on Barrios's consent. Therefore, the trial court properly denied defendant's motion to suppress evidence.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

KING
J.

MILLER
J.