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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.

CHRISTOPHER LOREN JONES,

Defendant and Appellant.

E059456

(Super.Ct.No. FSB1202066)

OPINION

APPEAL from the Superior Court of San Bernardino County. William Jefferson Powell IV, Judge. Affirmed.

Marilee Marshall, 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 Teresa Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant Christopher Loren Jones guilty of possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)).¹ In a bifurcated proceeding, the trial court found true that defendant had suffered one prior strike conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and two prior prison terms (§ 667.5, subd. (b)). Defendant was sentenced to a total term of eight years in state prison with credit for time served. Defendant's sole contention on appeal is that the trial court erred in denying his suppression motion. We reject this contention and affirm the judgment.

I

BACKGROUND²

Defendant filed a motion to suppress evidence pursuant to section 1538.5. A hearing on defendant's suppression motion was held on November 2, 2012. At that time, San Bernardino Police Officers Frank Fuentes and Joseph Valdivia testified. Both officers were assigned to the San Bernardino Police Department Violent Crimes Task Force and were familiar with the high-crime nature of the area where defendant was found—in a carport in the back parking lot of an apartment complex on West 8th Street

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

² Since the only issue on appeal concerns the denial of defendant's motion to suppress evidence, we will not recount the details of the factual background introduced at trial. Instead, we will describe the evidence presented at the November 2, 2012 hearing on the suppression motion.

in San Bernardino. The back parking lot of the apartment complex was adjacent to a field, which was located across the street from the San Bernardino police station.

There had been numerous citizen complaints regarding loitering, narcotics activity, and gang-related activity in the carport area. Officer Fuentes had assisted in investigations of narcotic sales and transportation at that area; and Officer Valdivia had previously made arrests for possession and sales of narcotics in that particular area. The area surrounding the apartment complex was also known to be a high-crime area; for example, a gang-related shooting had recently occurred adjacent to the apartment complex, and a vehicle possibly associated with a home invasion robbery had been found in the area.

On May 15, 2012, at around 1:43 p.m., Officers Fuentes, Valdivia, and Probation Officer Swims drove out of the police station in a patrol car. When they were about 50 to 100 feet away, they observed defendant and four or five other individuals standing around a Buick Century vehicle across the field in the carport area of the apartment complex. The Buick was parked in the carport area and the doors of the vehicle were open. The individuals were standing in a circle around the Buick talking. Defendant was near the driver's door. Based on his training and experience, Officer Fuentes believed the positions of the individuals were consistent with narcotic transactions.

Officer Valdivia drove toward the individuals to determine whether they were residents of the apartment complex or loiterers. As Officer Valdivia drove across the street and into the field directly toward the individuals and the chain-link fence that separated the property, the group of individuals dispersed in different directions. After shutting the Buick's door, defendant also dispersed. The officers believed the individuals were engaged in some sort of illegal activity.

As Officer Valdivia approached the fence on foot, he recognized one of the individuals, Edward McGruber, as someone he knew to be on parole with active search and gang terms, and a member of the Watts Grape Street Gang (Watts). McGruber was also being investigated for a shooting. Officer Valdivia also noticed another individual wearing clothing colors consistent with the Watts gang—a gray hat with a purple bill. Based on his training and experience, Officer Valdivia believed there was a reason to investigate whether McGruber was in violation of his parole terms.

Officer Valdivia loudly asked defendant and his comrades if any of them were on parole or probation, if they lived at the apartment complex, and if they would come over and talk to him. With the exception of one individual, defendant and the others ignored Officer Valdivia's questions and continued to rapidly walk away from the officers. Defendant walked to the other side of the parking lot towards a BMW vehicle, bent over, and threw something under the BMW. Although the item defendant threw under the vehicle sounded like keys, Officer Fuentes was not initially certain what the item was. Officer Fuentes was concerned for officer safety because at that time the officer did not

know if defendant was trying to retrieve a gun or hide a gun or conceal narcotics. Officer Fuentes also believed that it was possible defendant could have had a weapon in his clothing.

Based on his observations, Officer Fuentes jumped the chain-link fence, detained defendant, conducted a patdown search of defendant's person, and asked him if he was on probation or parole. Defendant stated that he had been discharged from parole on that day and that he resided at the apartment complex. A warrants check, however, revealed that defendant was still on parole. A parole agent who later arrived at the scene also confirmed defendant's parole status.

After Officer Fuentes confirmed with defendant that the Buick belonged to defendant, Officer Fuentes asked defendant whether he had anything illegal in the vehicle. Defendant indicated that he did not. Officer Fuentes then asked defendant if he could search his vehicle. Defendant gave his consent to search the vehicle. Officer Fuentes found one firearm concealed in the front driver's side and another in the front passenger's side door panels.

On cross-examination, Officer Fuentes admitted that he did not see any hand-to-hand transactions or anything illegal transpiring among defendant and the other individuals. Officer Valdivia believed the individuals were engaged in criminal activity from the totality of the circumstances and denied that the fact the individuals were Black males was part of the totality of the circumstances.

Following argument from counsel, the trial court denied defendant's suppression motion. The court found that the officers were justified in patrolling the area "to see if there [was] anything worth investigating." The court explained that there were several "salient facts" justifying their patrol: it was a high-crime area; there was a recent crime in that same carport; there was a shooting adjacent to the property; and a car that was potentially involved in a home invasion robbery was found adjacent to the property. The court also found defendant was lawfully detained based on several factors, leading the officers to believe some type of criminal activity was afoot. The court explained that the officers observed a group congregating, and immediately upon noticing the officers, the individuals dispersed in different directions. The court also noted that defendant went "in a different direction from some of the other individuals there, goes and puts keys under a different car which heretofore he is not associated with. . . . [¶] . . . [P]erhaps [defendant] is hiding something, discarding some property, which is not uncommon when one may have paraphernalia. Turns out it wasn't paraphernalia, it was car keys, but it is not something that an officer could or should ignore." The court concluded that "all of these factors would lead any reasonable officer to believe that something is afoot here, something is not right."

II

DISCUSSION

Defendant argues that the trial court erred in denying his suppression motion, because the detention was unlawful under the Fourth Amendment as the circumstances

did not justify a detention. Specifically, he argues that the officers had no basis for detaining him and there was “nothing inherently suspicious about several young men standing around a car in broad daylight having a conversation.” We find the motion was properly denied.

A police officer is permitted to initiate an investigative stop or detention of an individual without violating the Fourth Amendment when the officer has a reasonable suspicion that criminal activity may occur. (See *Terry v. Ohio* (1968) 392 U.S. 1, 30; and see, e.g., *People v. Conway* (1994) 25 Cal.App.4th 385, 388.) “In order to justify an investigative stop or detention in a case such as this, the circumstances known or apparent to the officer must include specific and articulable facts causing him to suspect that (1) some activity relating to a crime has taken place, is occurring, or is about to occur; and (2) the person he intends to stop or detain is involved in that activity.” (*People v. Jones* (1991) 228 Cal.App.3d 519, 524; *People v. Souza* (1994) 9 Cal.4th 224, 230.) Not only must he subjectively entertain such a suspicion, it must be objectively reasonable for him to do so. (*Ibid.*) A court is allowed to employ commonsense judgments and inferences about human behavior to determine whether reasonable suspicion is present. (*People v. Conway, supra*, 25 Cal.App.4th at p. 388; *People v. Letner and Tobin* (2010) 50 Cal.4th 99, 146.) In reviewing a trial court’s denial of a motion to suppress, “we uphold the trial court’s factual findings if they are supported by substantial evidence, but independently review its determination that the search did not violate the Fourth Amendment.” (*People v. Rogers* (2009) 46 Cal.4th 1136, 1157.)

Here, Officers Fuentes and Valdivia, who were assigned to the San Bernardino Police Department Violent Crimes Task Force, initially observed defendant standing in an area known for high narcotics activities and gang loitering. Officer Fuentes testified that he had assisted in investigations of narcotics sales and transportation in that area; and Officer Valdivia stated that he had previously made arrests for possession and sales of narcotics in that particular area. The area surrounding the apartment complex was also known to be a high-crime area, such that a gang-related shooting had recently occurred adjacent to the apartment complex, and a vehicle possibly associated with a home invasion robbery had been found in the area. When the officers first observed defendant, defendant was standing around a car with four to five other individuals in a manner that Officer Fuentes, based on his training and experience, found to be consistent with narcotics transactions. Immediately upon noticing the officers, defendant and the other individuals rapidly dispersed from each other in different directions. Officer Fuentes also observed defendant quickly walk away, bend over, and toss an object underneath a BMW vehicle in an attempt to conceal the object. Officer Fuentes was concerned for officer safety because at that time the officer did not know if defendant was trying to retrieve a gun or hide a gun or conceal narcotics. In addition, Officer Valdivia recognized one of the individuals as someone he knew to be on parole with active search and gang terms and a member of the Watts gang and the subject of an investigation for a shooting. Based on defendant's actions, the location of the area, and the officers' observations, the officers believed criminal activity was afoot. As such, Officer Fuentes jumped the chain-

link fence, detained defendant, conducted a patdown search of defendant's person, and asked him if he was on probation or parole. Although defendant stated that he had been discharged from parole on that day, a warrants check revealed defendant was still on parole.

Based on the totality of the circumstances, Officer Fuentes and the other officers were justified in conducting an investigative detention: they had specific and articulable facts that would cause a reasonable person to suspect that criminal activity involving defendant was afoot. The officers' testimonies showed: defendant was standing with four to five other individuals—one the subject of a shooting investigation and known member of the Watts gang who was on parole—in a manner consistent with narcotics transactions in an area known for drug sales and gang loitering; the group immediately dispersed in different directions upon noticing the officers; and defendant made furtive movements as the officers approached. “The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the principal function of his [or her] investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal. . . .” (*In re Tony C.* (1978) 21 Cal.3d 888, 894, superseded by statute on other grounds as stated in *In re Christopher B.* (1990) 219 Cal.App.3d 455, 460, fn.2.)

The case law cited by defendant does not compel a contrary conclusion. In *People v. Aldridge* (1984) 35 Cal.3d 473 (*Aldridge*), a veteran San Diego police officer testified a specific liquor store parking lot was a place where drug transactions were common and

people were frequently armed with weapons. (*Id.* at p. 476.) The officer made it his routine practice to conduct field interviews of every person he saw in the parking lot. One evening, a group of four men departed the lot and the officer radioed a nearby patrol car to stop and interview the quartet for any kind of narcotic activity. (*Ibid.*) Officers in the nearby car detained and questioned the four men, who were carrying packages that appeared to contain alcoholic beverages. (*Id.* at pp. 476-477.) Fearing for his safety, one of the detaining officers asked if any of the men had guns or knives. After one man produced a knife, the officer ordered all of them to turn around and place their hands on the patrol car. While patting down the defendant, the officer discovered a stolen, loaded gun. (*Id.* at p. 477.) The Supreme Court held that the fact it was nighttime, that the incident took place in an area of continuous drug transactions, and the fact that the defendant and his companions sought to evade police did not justify the detention. (*Id.* at pp. 478-481.) The Supreme Court specifically concluded the veteran officer's "stated intent and consistently repeated policy was to conduct a general detention and interrogation of all persons on the lot, evidently hoping to uncover some evidence of some crime by some person. Our state and federal Constitutions were written precisely to outlaw such unrestricted general sweeps and searches." (*Id.* at p. 480.)

In *People v. Raybourn* (1990) 218 Cal.App.3d 308 (*Raybourn*), an officer in plain clothes observed a nervous defendant, who appeared to be a transient, walking on a public street in daylight with a 35-millimeter camera hung around his neck. (*Id.* at pp. 310-311.) The officer explained that he was "curious" because the defendant's

appearance “‘didn’t fit the camera.’” (*Id.* at p. 310.) As the officer approached to talk to the defendant, the defendant ran away. (*Id.* at p. 311.) The defendant was eventually detained and the officer found a bundle of cocaine in the defendant’s pocket. (*Ibid.*) The Court of Appeal invalidated the detention, finding: “Neither of the minimally significant factors of ‘nighttime’ or ‘high crime area’ was present. [Citation.] Mere nervous, furtive, or evasive conduct in the presence of police will not justify a detention. [Citations.] What remains is [the officer’s] conclusion [the defendant] ‘didn’t fit the camera.’ [¶] Cases have long rejected a finding of cause to detain based upon ‘an “inchoate and unparticularized suspicion or ‘hunch.’” [Citations].’” (*Id.* at pp. 311-312, fn. omitted.)

Both of the above cases relied upon by defendant are distinguishable from the present matter, because both of the cases lack the articulable facts present in this case which gave rise to a reasonable suspicion. The officer in *Aldridge* had a “consistently repeated policy” of conducting “field interviews”—a general detention and interrogation—of all persons on a specified parking lot in a high-crime area. (*Aldridge, supra*, 35 Cal.3d at pp. 476, 480.) The officer in *Raybourn* stopped a “somewhat nervous” defendant based upon a mere hunch. (*Raybourn, supra*, 218 Cal.App.3d at pp. 311-312.) In contrast, Officer Fuentes acted on particularized circumstances by observing defendant disperse across the parking lot from where he was originally standing in a known high-crime area with other individuals in a manner consistent with narcotic transactions and toss an object underneath a vehicle in an attempt to conceal

something. Defendant's actions, in light of the totality of the circumstances, provided the officers with a reasonable suspicion that criminal activity was afoot. The Supreme Court has long recognized: "[E]xperienced police officers develop an ability to perceive the unusual and suspicious, and we recognize the right and duty of officers to make reasonable investigation of such activities." (*Aldridge, supra*, 35 Cal.3d at p. 477.)

"In an earlier day before the traffic in illicit drugs [and criminal street gangs] became endemic to our society, the above circumstances might not—and probably would not—have been consistent with criminal activity. Unfortunately, times have changed, and a multitude of controlled substances [and firearms] are openly bought and sold on our streets and in our neighborhoods. To any police officer knowledgeable of such conditions, the circumstances above described would not only raise, but almost compel, a reasonable suspicion that conduct 'consistent with criminal activity' was taking place." (*People v. Brown* (1990) 216 Cal.App.3d 1442, 1450, 265 Cal.Rptr. 552.)

Thus, we determine that the additional facts, when combined with the factors of a known high drug and gang activity area and flight from police, establish "specific and articulable facts causing [the officers] to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity. . . ." (*Aldridge, supra*, 35 Cal.3d 473, 478; see also *In re Tony C., supra*, 21 Cal.3d 888, 893.) The motion to suppress evidence was properly denied.

III
DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

RICHLI
J.

MILLER
J.