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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER JOHN JUAREZ,

Defendant and Appellant.

F062316

(Super. Ct. No. BF133012A)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. Jerold L. Turner, Judge.

H.A. Sala for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Marcia A. Fay, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Cornell, Acting P.J., Gomes, J. and Detjen, J.

Defendant and appellant Christopher John Juarez contends the trial court erred in denying his motion to suppress evidence. (See Pen. Code, § 1538.5.) We disagree and affirm the judgment.

## **FACTS AND PROCEDURAL HISTORY**

### *A. Statement of the Case*

Defendant was charged with selling heroin, possession for sale of heroin and possession of heroin in violation of Health and Safety Code sections 11352, 11351 and 11350, subdivision (a), respectively. On February 1, 2011, defendant's suppression motion was denied. On March 16, 2011, defendant withdrew his plea of not guilty and entered a plea of nolo contendere to one count of possession for sale of heroin. (Health & Saf. Code, § 11351.) The remaining charges were dismissed. On April 14, 2011, the trial court suspended imposition of sentence and placed defendant on probation for three years, with terms and conditions, including a residential treatment program.

### *B. Summary of the Facts*

On July 16, 2010, at approximately 7:49 p.m., Bakersfield Police Officer Ofelio Lopez was driving through a parking lot where he witnessed defendant standing between two vehicles, a pickup truck and a car. Defendant was talking to a passenger of the truck. He had both arms inside the truck, one further than the other. Lopez testified: "Upon seeing me, [defendant] appeared surprised, appeared to be telling the passenger something, retrieved his hands out of the pickup, and appeared to be concealing something in his waistband." Defendant turned away from Lopez and walked toward the convenience store. Defendant "immediately put both of his hands to the front of his waistband underneath his pants and shirt." "He ... conceal[ed] both hands underneath the clothing."

Lopez had been a police officer for 10 years, had received basic narcotics training at the academy, had previous training as a military police officer, had made prior drug arrests involving heroin, and had previous conversations with fellow officers relating to

heroin, possession, sales, and heroin paraphernalia. Based on defendant's behavior, and the fact defendant "appeared to be concealing something down his pants after being in contact with a person inside of a vehicle," Lopez believed he had witnessed a drug transaction.

Lopez parked his patrol vehicle, stepped out of it, and called out to defendant asking whether he could speak with him. Defendant turned back toward Lopez, stopped walking, and said, "Sure." Lopez asked defendant what he was doing. Defendant responded that he was going to the store to buy toilet paper. Lopez asked if he could conduct a search of defendant's person. Defendant said he could. The patdown search revealed nothing. While this interaction was occurring, Lopez saw the driver and the passenger of the pickup truck making "furtive movements with [their] hands, reaching down toward[] [their] lower extremities." Lopez asked both occupants of the pickup truck to put their hands where he could see them. Another officer arrived at the scene. Lopez asked defendant "if he would mind having a seat." Defendant said, "Sure," and sat down on the front sidewalk area of the store.

Lopez contacted the passenger of the pickup truck and found, inside the underwear of the passenger's clothing, several syringes and a metal spoon. The other officer searched the driver of the pickup truck and found a sunglass case that contained syringes, a spoon, and a "clear piece of plastic with brown residue on it." The passenger told Lopez he had purchased heroin from defendant.

Lopez contacted the driver of the car. The driver first told Lopez that he was not with defendant but then, when defendant mouthed the word "what," the driver changed his statement and told Lopez he was with defendant. The driver said the vehicle was his and gave Lopez permission to search it. In his search of the vehicle, Lopez found marijuana, foil paper, and a cellular telephone.

Lopez then returned to defendant and told him he believed defendant had placed an item in his pants, which defendant denied. Lopez asked defendant if he would lift up

his shirt so Lopez could see his waistband. Defendant complied. Lopez saw a piece of white and blue plastic protruding from the inside portion of defendant's underwear and removed the item. It was a piece of plastic containing heroin. Lopez arrested defendant. Defendant was transported to the jail and booked into it at 9:00 p.m.

### **DISCUSSION**

Defendant contends Lopez did not have reasonable suspicion to detain him while Lopez conducted his further investigation and that, in any event, the detention was unduly prolonged. The Attorney General contends there was no detention of defendant, merely a consensual encounter with Lopez and that, if a detention occurred, it was permitted by law and was not unduly prolonged. The trial court did not state reasons in its minute order denying the suppression motion. We will assume for purposes of our discussion that there was a detention of defendant.

A detention complies with the Fourth Amendment “if the officer’s action is supported by reasonable suspicion to believe that criminal activity “may be afoot.” [Citations.]” (*People v. Williams* (2007) 156 Cal.App.4th 949, 958, quoting *United States v. Arvizu* (2002) 534 U.S. 266, 273 (*Arvizu*)). “[T]he determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior.” (*Illinois v. Wardlow* (2000) 528 U.S. 119, 125.)

Three facts, specifically articulated by Lopez, evidence a reasonable suspicion defendant was involved in an illegal drug deal. (See *People v. Souza* (1994) 9 Cal.4th 224, 230.) First, defendant was not simply resting his arms on the window frame while chatting with the occupants of the pickup truck. Instead, he was reaching into the truck, with one arm extended farther than the other. Second, when defendant became aware of the police officer’s presence, he look surprised, withdrew his arms, turned from the

officer, and began to walk away.<sup>1</sup> Third, defendant reached both hands into the front of his pants in a gesture that could only be interpreted as concealing something in his pants. As argued by the prosecutor: “That’s not a place people put their wallet. That’s not a place people put their glasses. That’s a place that people put drugs and something illegal when they’re trying to hide them because they’ve just seen an officer and they’re trying to get away.” (Lopez testified the pants had pockets, so there is no possible inference that defendant needed an alternative way for transport of ordinary personal effects.)

Defendant highlights cases such as *People v. Limon* (1993) 17 Cal.App.4th 524, 532 and *People v. Mims* (1992) 9 Cal.App.4th 1244, 1248 to support his contention that circumstances that justified detention in those cases are not present here. Defendant notes some of those circumstances, such as heavy narcotics activity, observation by the officer of an actual exchange of either currency or a plastic bag, and previous experience of an officer witnessing similar transactions in the same area. Defendant also highlights *People v. Jones* (1991) 228 Cal.App.3d 519, 524, arguing that circumstances such as the appearance of possible U.S. currency and high narcotics activity—circumstances not present here—were held not to justify a detention. Defendant further argues that Lopez did not have the training of the border patrol agent in *Arvizu* to make an assessment that a “specific and particularized suspicion of criminal activity” existed.

*Arvizu* states that when making “reasonable-suspicion determinations,” reviewing courts “must look at the ‘totality of the circumstances’” in deciding whether the detaining officer has a “‘particularized and objective basis’ for suspecting legal wrongdoing.” (*Arvizu, supra*, 534 U.S. at p. 273.) The Supreme Court rejected the Court of Appeals’ approach of evaluating seven factors “in isolation from each other” because it did not

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<sup>1</sup> While defendant’s movement away from Lopez might not be characterized as “flight,” it clearly constituted an effort to avoid contact with the officer in circumstances that indicated a consciousness of guilt. (See *People v. Souza, supra*, 9 Cal.4th at pp. 234-235.)

take “into account the ‘totality of the circumstances’” in determining whether a reasonable suspicion existed to justify a detention. (*Id.* at p. 274.) Similarly, defendant’s argument highlighting the absence and presence of certain facts and circumstances also fails to take into account of the “totality of the circumstances” of whether a reasonable suspicion existed to justify defendant’s detention. (*Ibid.*)

It is not dispositive that Lopez did not have the same training as the border patrol agent in *Arvizu*. As the court stated in *Arvizu*: “This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that ‘might well elude an untrained person.’” (*Arvizu, supra*, 534 U.S. at p. 273.) Here, Lopez drew on *his own experience* in determining whether a reasonable suspicion existed to detain defendant. This experience included 10 years as a police officer, training in basic narcotic investigation at a police academy, and discussions with drug users and drug dealers.

Defendant contends Lopez knew he did not have grounds to detain defendant because he admitted at the suppression hearing that the occupants of the pickup truck were “free” to drive away after he detained defendant. It is clear that, viewed in context, Lopez was simply acknowledging the reality that, until his backup officer arrived, he would have been unable to physically prevent the pickup truck from leaving the scene. (“There was nothing -- I wouldn’t be able to stop them if they drove away.”)

Lopez clearly testified that he had just witnessed “a drug transaction taking place.” The facts reasonably supported his conclusion.

Defendant next contends the detention was unduly prolonged, thereby constituting a de facto arrest without probable cause. “In assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.” (*People v. Williams, supra*, 156 Cal.App.4th at p. 959, quoting *United*

*States v. Sharpe* (1985) 470 U.S. 675, 686.) In *Williams*, the court held that the defendant's four- to five-hour detention was not unduly prolonged because it took time for the deputies to "search the area and gather the evidence that linked appellant to the [narcotics]." (*People v. Williams, supra*, 156 Cal.App.4th. at p. 960.)

Here, there is a dispute as to how long defendant was detained. The People allege that defendant waited on the sidewalk for about 20 minutes, whereas defendant contends that he waited on the sidewalk for over an hour. However, even if defendant did wait for over an hour, his detention was not unlawfully prolonged. Lopez, and later Torres, "diligently pursued a means of investigation." (*People v. Williams, supra*, 156 Cal.App.4th at p. 959.) Like the deputies in *Williams*, time was needed to "gather the evidence." (*Id.* at p. 960.) Two vehicles needed to be searched and three potential suspects needed to be questioned. After conducting the initial search of defendant, Lopez spoke to, searched, and arrested the passenger of the pickup truck. At the same time, Torres spoke to the driver of the pickup truck and searched the truck. After arresting the passenger of the pickup truck, Lopez contacted the driver of the car and searched the car. During the investigations, the suspicions of the officers were confirmed as Lopez learned that the passenger of the pickup truck had purchased heroin from defendant. (See *United States v. Sharpe, supra*, 470 U.S. at pp. 686-688; *People v. Russell* (2000) 81 Cal.App.4th 96, 102.)

## **DISPOSITION**

The judgment is affirmed.