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

THE PEOPLE,

Plaintiff and Respondent,

v.

ALBERT MUHAMMAD, JR.,

Defendant and Appellant.

F062606

(Super. Ct. No. F09906073)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Gary R. Orozco, Judge.

Richard J. Krech, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, and Kathleen A. McKenna, Deputy Attorney General, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Gomes, J. and Franson, J.

Two police officers riding in a marked patrol car heard several gunshots and, moments later, heard a report from dispatch that a “silver vehicle” was involved. Less than a minute later, the officers saw a silver car two blocks away from where the shots originated. After initiating an investigative stop, one officer gave chase to a passenger, who fled on foot, and the other officer found 29 oxycodone pills in a baggie in the center console. The driver, Albert Muhammad, Jr., was standing outside the patrol car when a bag containing 21 bindles of methamphetamine dropped to the ground between his feet.¹ After the court denied his motion to suppress, he pled no contest to one drug charge. On appeal, he challenges the court’s denial of his motion. We affirm.

BACKGROUND

On September 21, 2010, an information charged Muhammad with, inter alia, transportation of oxycodone (count 4; Health & Saf. Code, § 11352, subd. (a));² possession of oxycodone for sale (count 5; § 11351); possession of methamphetamine for sale (count 6; § 11378); and transportation of methamphetamine (count 7; § 11379, subd. (a)).³ The information alleged one prior “strike” conviction (Pen. Code, §§ 667, subds. (b)-(i) & § 1170.12, subds. (a)-(d)), two prior felony convictions related to controlled substances (§ 11370.2, subds. (a), (c)), and service of one prior prison term. (Pen. Code, § 667.5, subd. (b)).

Following the denial of his motion to suppress, Muhammad pled no contest to possession of oxycodone for sale and admitted one prior “strike” conviction and a prior felony conviction related to controlled substances. Pursuant to a negotiated plea bargain, the prosecutor moved to strike the remaining charges and enhancements. On May 31, 2011, the court sentenced Muhammad to state prison for a total of four years (two years

¹ The discussion sets out additional facts, as relevant (*post*).

² All undesignated statutory references are to the Health and Safety Code.

³ Additional counts against Muhammad and the passenger are not relevant here.

doubled pursuant to the “Three Strikes” law). (Pen. Code, §§ 667, subd. (e)(1), 1170.12, subds. (b), (c)(1)).

DISCUSSION

Muhammad argues that his search and seizure violated the Fourth Amendment because the officers lacked probable cause when they initiated an investigative stop of the silver car he was driving. The Attorney General argues that probable cause is not necessary to initiate an investigative stop and that Muhammad’s detention was lawful because the officers had a reasonable suspicion that his silver car was involved in a recent nearby shooting. We agree with the Attorney General. (See, e.g., *People v. Lloyd* (1992) 4 Cal.App.4th 724, 733.)

The evidence that Muhammad characterizes as improper arose from the search and seizure of his car by police officers. Officer Mark Witrado testified that he heard “several gunshots” that came from the area of Fresno and C Street at 1:53 a.m. on October 23, 2009. The officers began driving around “canvassing” the area and listening for any updates. Officer Vincent Zavala testified that, while they were canvassing, there was an update in the dispatch call that said a “silver four-door vehicle” was involved. Witrado saw a silver car that fit the description of that car at Tulare and C Street about two blocks away, within “30 to 40 seconds” after he heard the shots.

After initiating a traffic stop by “activating the lights,” Witrado testified the car made a turn into the driveway of an apartment complex. The officers continued to follow the vehicle as it slowed down, but it did not pull over. Asked why a traffic stop was initiated, Witrado testified that the car was speeding and matched the description of the vehicle seen after the shots were fired, so they “attempted to catch up to it in order to stop it.” Zavala testified they decided to stop the vehicle because it matched the description.

When he saw the passenger door open, Witrado immediately thought the vehicle was just looking for a place to stop so that someone could get out and run. Once the vehicle stopped, Witrado saw a “black male get out of the passenger side.” Both officers

saw a “metallic object” in the runner’s waistband and a “magazine” from a weapon fall to the ground. While Zavala gave chase to the runner, Witrado ordered the other two individuals, one of whom was Muhammad, to stay inside the vehicle.

After securing Muhammad in another patrol vehicle, Witrado searched the silver car and found 29 oxycodone pills in a clear baggie in the center console. Later, while shifting his body weight from left to right during his transfer from one patrol vehicle to another, Muhammad told Witrado he needed to use the restroom. At that moment, Witrado heard what sounded like a plastic satchel or sack drop to the ground. Inside were 21 bindles of a crystal-like substance, later identified as methamphetamine, “directly underneath [Muhammad] in between his feet.” Muhammad said, “[T]hat’s not my shit.”

On appellate review of a trial court’s ruling on a motion to suppress, the appellate court should defer to the factual findings of the trial court where supported by substantial evidence. The appellate court must then determine independently, based on those facts, whether the search or seizure was reasonable under the United States Constitution. (*People v. Redd* (2010) 48 Cal.4th 691, 719, citing *People v. Glaser* (1995) 11 Cal.4th 354, 362.)

To justify an investigative stop, the circumstances known or apparent to the officer must include specific facts which, viewed objectively, would cause a reasonable officer to suspect that (1) some activity relating to a crime has taken place or is occurring or about to occur and (2) the person the officer intends to stop or detain is involved in that activity. As a general rule, a defendant’s proximity to a specifically described suspect, shortly after and near the site of the crime, provides reasonable grounds to detain for investigation a defendant who otherwise fits certain general descriptions. (*People v. Conway* (1994) 25 Cal.App.4th 385, 388, citing *In re Tony C.* (1978) 21 Cal.3d 888, 893; *In re Carlos M.* (1990) 220 Cal.App.3d 372, 382.) Here, the totality of the circumstances

amply justified the investigative stop and Muhammad's detention. The court's denial of his motion to suppress was proper.

DISPOSITION

The order is affirmed.