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

THE PEOPLE,

Plaintiff and Respondent,

v.

JOAQUIN CHARLES JAY,

Defendant and Appellant.

F062757

(Super. Ct. Nos. F09904874,
F09904875, F09905154)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Don D. Penner, Judge.

Rudy Kraft, 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, Kathleen A. McKenna and Tiffany J. Gates, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Hill, P.J., Kane, J. and Franson, J.

Appellant Joaquin Charles Jay challenges the denial of his motion to suppress. Appellant argues that his detention was unreasonable and the evidence seized should be suppressed. We find appellant's detention did not run afoul of the Fourth Amendment to the United States Constitution. The detaining officers had reasonable suspicion that criminal activity was afoot and that appellant was engaged in that activity. Finding the detention reasonable, we affirm the judgment.

PROCEDURAL AND FACTUAL BACKGROUND¹

Three separate informations (case Nos. F09904874, F09904875, F09905154) were filed against appellant charging him with various crimes and enhancements. After pleading not guilty, appellant moved to suppress the evidence seized during his detention in connection with case No. F09905154. The motion was denied. Subsequently, appellant entered a negotiated plea of no contest to second degree burglary (Pen. Code, § 459)² with an on-bail enhancement (§ 12022.1) in case No. F09904874; unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a)) in case No. F09904875; possession of methamphetamine for sale (Health & Saf. Code, § 11378) in case No. F09905154, and admitted allegations in all three informations that he had served three prior prison terms (§ 667.5, subd. (b)). Appellant was sentenced to prison for a total of six years and four months.

Appellant was arrested after law enforcement officers found seven bindles of apparent methamphetamine on the ground between appellant's legs; an eighth bindle was found in appellant's pocket when he was searched after his arrest.

¹ The facts are taken from the hearing on appellant's motion to suppress and pertain to the methamphetamine possession count in case No. F09905154. Facts underlying the other two cases have been omitted as unnecessary to our resolution of the issue on appeal.

² Further statutory references are to the Penal Code unless otherwise specified.

The arresting officers were members of MAGEC (Multi-agency Gang Enforcement Consortium). The officers had just finished a parole search of a hotel room around 9:00 p.m., when they saw appellant walking away from another room at the same hotel. The hotel was located in a “high crime area” known for gang, narcotics, and prostitution activity.

The officers recognized appellant from an encounter they had with him earlier that night. Around 8:00 p.m., they saw him leaving a gas station/liquor store located in the same general area as the hotel. As appellant got on a bicycle, Fresno County Police Officer Mark Wilcox asked appellant if he could talk to him. Appellant raised his hand and said, “Are you going to jack me like the other officers did?” After Officer Wilcox said no, appellant rode away.

When he saw appellant at the hotel an hour later, Officer Wilcox raised his hand to get appellant’s attention and said, “Hey, can I talk to you?” In response, appellant started walking towards Officer Wilcox and the other officers at a “casual” pace. After walking about 10 feet, appellant “abruptly” turned and “dart[ed]” behind a pillar, out of the officers’ view.

Appellant’s actions caused the officers to be concerned for their safety. Officer Wilcox and his MAGEC partner, Fresno Sheriff’s Deputy Eric Cervantes, explained in their testimony that appellant was wearing loose, gang-colored clothing and that it was common for gang members to carry weapons. Appellant’s shirt hung far over his waistband, which was a common place for gang members to carry guns.

Deputy Cervantes was also concerned due to appellant’s “very irrational” behavior during their previous encounter with him. Deputy Cervantes explained that appellant had not spoken in a normal manner but had been “loud and boisterous” and appeared to be “very angry” towards the officers.

After appellant moved behind the pillar, the officers repositioned themselves so they could see him. Deputy Cervantes saw appellant’s left hand going towards his

waistband. Deputy Cervantes told appellant several times to show his hands but appellant did not comply. Appellant assumed a “bladed stance,” which Officer Wilcox explained as follows: “When I say bladed stance, it means one of your feet, left or right forward, similar to a boxing stance. It’s in preparation for ... fighting another individual.” Based on appellant’s body language, Officer Wilcox believed appellant was preparing for a physical altercation with the officers.

One of the officers went forward, grabbed appellant’s left hand, and pushed him against the wall. Officer Wilcox grabbed appellant’s right wrist. As the two officers grabbed appellant, Deputy Cervantes heard something hit the ground. He then saw several bindles of what appeared to be methamphetamine on the ground directly between appellant’s legs. Deputy Cervantes said, “[h]andcuff him, handcuff him, he dropped something.” Appellant responded, “That shit ain’t mine, you mother fuckers planted that on me.”

After placing appellant under arrest, Officer Wilcox searched him. The search uncovered \$13 in cash and another bindle that looked identical to the seven bindles found on the ground underneath appellant.

DISCUSSION

I. Motion to Suppress

The sole issue on appeal is whether the trial court erred in denying his motion to suppress evidence. Appellant sought to suppress evidence of the bindles seized on the ground the evidence was the fruit of an unlawful detention. In denying the motion, the trial court found that appellant had failed to establish he had a reasonable expectation of privacy in the items seized (i.e., standing to contest the seizure) based on his disclaimer of ownership regarding the bindles found on the ground. The court further found that, even assuming appellant had standing, the seizure of evidence would still be lawful under the Fourth Amendment because the circumstances created a reasonable suspicion justifying the detention. Appellant challenges both of the court’s findings. Because we

find there was reasonable suspicion to detain appellant, we need not address the question of standing.

The standard an appellate court employs in its review of a denial of a motion to suppress evidence is well settled. (*People v. Sardinias* (2009) 170 Cal.App.4th 488, 493.) “We defer to the trial court’s factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]” (*Ibid.*)

The Fourth Amendment permits an officer to “conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot” and that the person detained is engaged in that activity. (*Illinois v. Wardlow* (2000) 528 U.S. 119, 123; *People v. Souza* (1994) 9 Cal.4th 224, 230 (*Souza*).

Courts have always looked to the totality of circumstances of each case in determining whether the “detaining officers [had] a particularized and objective basis for suspecting [the detainee] of criminal activity.” (*Souza, supra*, 9 Cal.4th at p. 230; *Brown v. Texas* (1979) 443 U.S. 47, 52; *United States v. Arvizu* (2002) 534 U.S. 266, 273.) This approach allows officers to draw on their own training and experience in deciding whether criminal activity is afoot. (*United States v. Arvizu, supra*, at p. 273.) With this approach in mind, we now turn to the facts of this case.

The detention occurred in an area known to the officers for its high crime rate, gang and narcotics activity; appellant was wearing loose, gang-colored clothing; gang members, in the testifying officers’ experience, often carried weapons in the waistband area which, on appellant, was concealed by his loose clothing; and appellant engaged in oddly erratic and evasive behavior. After initially responding to Officer Wilcox’s request to talk to him by walking in the direction of the officers, appellant suddenly darted behind a pillar and Deputy Cervantes saw him start reaching towards his waistband. Appellant

failed to comply with repeated requests to show his hands and instead assumed a combative physical stance towards the officers.

Taken individually, each of these facts would probably not provide the officers with reasonable suspicion, but taken as a whole they do. We are not concerned with whether the officers had probable cause to arrest appellant but with whether they had a particularized and objective basis for suspecting criminal activity was afoot. We believe they did. Appellant's arguments to the contrary are unpersuasive.

DISPOSITION

The judgment is affirmed.