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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DAT THANH TRAN,

Defendant and Appellant.

G044524

(Super. Ct. No. 08WF1496)

OPINION

Appeal from a judgment of the Superior Court of Orange County, Lance Jensen, Judge. Affirmed.

Valerie G. Wass, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, James D. Dutton and Michael T. Murphy, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury convicted defendant Dat Thanh Tran of possession of marijuana for sale. (Health & Saf. Code, § 11359.) Tran contends the trial court erred in denying his motion to suppress evidence as the product of an unlawful detention. (Pen. Code, § 1538.5.) He also argues there was insufficient evidence he possessed marijuana with the intent to sell it. For the reasons expressed below, we affirm.

I

FACTUAL AND PROCEDURAL HISTORY

On the afternoon of July 6, 2008, Westminster Police Officer Lauren Vasquez pulled her patrol car behind a black Acura parked in front of a residence on Shell Circle, with four or five men standing in the driveway. One of the men, Tran, stated the Acura belonged to him. Vasquez directed Tran to approach, and as he came close she smelled marijuana. Tran admitted he had recently smoked marijuana, and directed the officer to his discarded marijuana cigarette. Officers searched Tran, his cell phone, and the car. Officer Steven Booth, who had arrived on the scene to assist Vasquez, found a glass jar containing approximately six grams of marijuana on the Acura's back seat. Tran's wallet contained \$1,530 in cash, which the sporadically employed Tran claimed came from an insurance settlement. Tran's cell phone contained recent text messages indicative of marijuana sales transactions. One of Tran's companions possessed a small digital scale. Booth provided expert testimony suggesting the marijuana found in the Acura was possessed for sale.

Tran denied selling marijuana, claiming he smoked about a gram of it per day. Seven grams cost him \$100. Tran offered various explanations for the text messages and scale.

II

DISCUSSION

A. *The Trial Court Did Not Err in Denying Defendant's Motion to Suppress Evidence*

On July 6, 2008, Westminster police received a 911 call from Hung Tran,¹ who reported that “some boy or teenager is smoking something” outside the Shell Circle residence. When asked what the person was smoking, he replied, “I don’t know, like, maybe drugs or something.” Hung estimated there were six or seven boys standing outside. He stated, they “come here often,” and had arrived that night in a black Acura Integra and an older white van.

According to Officer Vasquez, she received a dispatch to investigate “some subjects smoking possibly drugs.” She arrived in the Shell Circle cul-de-sac and pulled behind the black Acura parked along the curb. Three to five young men between the ages of 18 and 20 stood in the driveway talking. None were smoking. She stood by the open door of her patrol car, about 20 feet from the men, and asked if the Acura belonged to anyone. Tran raised his hand and acknowledged the car belonged to him. Vasquez “waved him over” or “walked him over” to her car. She motioned him over rather than walking to the group because of officer safety concerns.

Tran walked to the patrol car until he stood about three feet away. Vasquez waved the other individuals over and told them to sit on the curb. Vasquez explained neighbors had called to complain about the gathering, and she and Tran engaged in small talk about where he lived and the car. During the conversation, Vasquez detected the odor of marijuana coming from Tran. Tran admitted he had thrown a marijuana cigarette into the bushes near the driveway.

¹ The record sheds no light on whether Hung Tran was related to the defendant.

At some point after Booth arrived, Vasquez pat-searched Tran with his permission and removed his wallet. She held his wrists behind his back with his legs spread as she conducted the search. Afterward, Vasquez directed Tran to sit on the curb. She located the burnt remains of a marijuana cigarette in the bushes adjacent to the driveway. Booth searched the car, and reviewed the text messages on Tran's phone. Vasquez stated that before "going over to the bushes, [she] did not . . . observe any illegal activity"

Tran moved to suppress evidence of his marijuana possession based on an unlawful detention. (Pen. Code, § 1538.5.) The parties agreed Tran was detained at the point Vasquez waved him over. Tran argued the officers lacked any legal basis to initiate the detention. The court denied the motion, concluding the officer's conduct was reasonable based on the neighbor's report.

Police officers may briefly detain a person "if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause. [¶] The officer, of course, must be able to articulate something more than an 'inchoate and unparticularized suspicion or 'hunch.'" [Citation.] The Fourth Amendment requires 'some minimum level of objective justification' for making the stop." (*United States v. Sokolow* (1989) 490 U.S. 1, 7.) We must examine the "totality of the circumstances" in each case to determine whether a "particularized and objective basis" supports the detention. (*United States v. Cortez* (1981) 449 U.S. 411, 417.) "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.' [Citations.] Although an officer's reliance on a mere "'hunch'" is insufficient to justify a stop [citation], the

likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard, [citation].” (*United States v. Arvizu* (2002) 534 U.S. 266, 273-274.) Thus, “[a] detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.” (*People v. Souza* (1994) 9 Cal.4th 224, 231.) The appellate court measures the facts found by the trial court against the constitutional standard of reasonableness, exercising independent judgment. (*People v. Leyba* (1981) 29 Cal.3d 591, 596-597.)

As the trial court noted, the issue is a close one. But we agree with the trial court and conclude circumstances warranted a brief detention to ascertain whether Tran had been smoking an illegal substance. The record reflects Hung fell into the category of a citizen informant. These individuals “are innocent of criminal involvement, and volunteer their information fortuitously, openly, and through motives of good citizenship.” (*People v. Ramey* (1976) 16 Cal.3d 263, 268–269.) Absent evidence to the contrary, a citizen informant is presumed to be reliable. (*Id.* at p. 269; see also *People v. Smith* (1976) 17 Cal.3d 845, 852.) Based on the information Hung provided, Vasquez reasonably could suspect Tran was part of the group that previously had been smoking outside the Shell Circle residence because Tran identified himself as the owner of the Acura, which the citizen informant had associated with the boys who had been smoking “drugs or something.”

Although Hung could not say for certain whether the boys were smoking cigarettes or drugs, his report that drugs might be involved was a sufficient basis for

further investigation. The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. The principal function of the officer's investigation is to resolve that very ambiguity and establish whether the activity is legal or illegal. (*In re H.M.* (2008) 167 Cal.App.4th 136, 145; see also *People v. Rios* (1983) 140 Cal.App.3d 616 [a citizen informer's report may reasonably create a police officer's suspicion and trigger an investigation where the report provides a reasonable suspicion of the defendant's involvement in criminal activity].) Although Vasquez could have approached the group and engaged in a "consensual encounter," it was not unreasonable to direct Tran over for a brief investigation based on concerns for her safety, since she was alone and outnumbered. Tran does not contest the subsequent actions the officers took after they determined he had been smoking marijuana.

B. *Substantial Evidence Supports the Marijuana for Sale Conviction*

Tran also contends there is insufficient evidence to support his conviction for possessing marijuana for sale. We disagree.

An appellate court reviews the record in the light most favorable to the judgment below to determine whether it discloses substantial evidence, defined as evidence that is reasonable, credible, and of solid value. (*Jackson v. Virginia* (1979) 443 U.S. 307, 318–319; *People v. Elliot* (2005) 37 Cal.4th 453, 466; *People v. Johnson* (1980) 26 Cal.3d 557, 576–578.) The test is whether substantial evidence supports the verdict, not whether the evidence proves guilt beyond a reasonable doubt. (*People v. Crittenden* (1994) 9 Cal.4th 83, 139.) Thus, the court must affirm the judgment below unless "upon no hypothesis whatever is there sufficient substantial evidence to support it." (*People v. Redmond* (1969) 71 Cal.2d 745, 755 (*Redmond*)). It

is the jury's exclusive province to assess the credibility of the witnesses, resolve conflicts in the testimony, and weigh the evidence. (*People v. Sanchez* (2003) 113 Cal.App.4th 325, 330 (*Sanchez*.) The fact circumstances can be reconciled with a contrary finding does not warrant reversal of the judgment. (*People v. Bean* (1988) 46 Cal.3d 919, 932–933.) Accordingly, a defendant “bears an enormous burden” when challenging the sufficiency of the evidence. (*Sanchez*, at p. 330.)

Section 11359 of the California Health and Safety Code provides in relevant part, “[e]very person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished by imprisonment” (Health & Saf. Code § 11359.) To secure a conviction for unlawful possession of marijuana for sale, the prosecution had to prove that: (1) Tran exercised dominion and control over the marijuana; (2) Tran knew he possessed the marijuana; (3) Tran was aware of the nature of the marijuana; (4) Tran possessed an amount of marijuana sufficient to be used for sale; and (5) Tran possessed the marijuana with the specific intent to sell it. (*People v. Parra* (1999) 70 Cal.App.4th 222, 226.)

Tran argues we should reverse his conviction because the evidence at trial failed to establish he possessed marijuana with the specific intent to sell it. Tran argues he did not possess the small digital scale, the police did not find evidence of pay/owe sheets or packaging materials, which are often indicative of drug sales, the large amount of money in his wallet came from an insurance settlement, not drug transactions, and the text messages found on his phone were ambiguous.

One text message said, ““What line of nugs you got right now?”” to which Tran responded, “I’ve got purp haze and purp lush.”” Officer Booth testified “purp haze” and “purp lush” are slang terms for types of marijuana. Booth also testified that

small digital scales, like the one found by Officer Vasquez, may be used by people selling drugs. Tran explained the messages referred to the sale of BB gun pellets, and none of the text messages were from the day of Tran's arrest. But the jury rejected Tran's defense and we will not reweigh the evidence. Tran's possession of marijuana, his friend's possession of a digital scale, the text messages on his cell phone, and the large amount of cash in his wallet constitute substantial evidence upon which the jury could have reasonably concluded that Tran intended to sell the marijuana. This is not a situation where "upon no hypothesis whatever is there sufficient substantial evidence to support" his conviction of possession with intent to sell. (*Redmond, supra*, 71 Cal.2d 745 at p. 755.) Tran has not met the "enormous burden" required to reverse his conviction. (*Sanchez*, 113 Cal.App.4th at p. 330.)

III

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P.J.

MOORE, J.