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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.

ANTHONY RALEIGH CHARGUALAF,

Defendant and Appellant.

G050219

(Super. Ct. No. 12WF0412)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Michael J. Cassidy, Judge. Affirmed.

Kevin Smith, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney
General, Arlene A. Sevidal and Junichi P. Semitsu, Deputy Attorneys General, for
Plaintiff and Respondent.

* * *

INTRODUCTION

Defendant Anthony Raleigh Chargualaf moved to suppress evidence seized during and after a vehicle search following a traffic stop. After the trial court denied his motion, Chargualaf pleaded guilty to one count each of possession of a firearm by a felon, possession of a controlled substance while armed with a loaded firearm, access card counterfeiting, acquiring access card account information, and identity theft. Chargualaf's appeal challenges the trial court's denial of his suppression motion and is authorized by Penal Code section 1538.5, subdivision (m).

We affirm. The evidence reviewed at the suppression hearing supported a finding that the police officer who conducted the search could point to specific articulable facts which, considered under the totality of the circumstances, provided objective manifestation Chargualaf was in violation of Vehicle Code section 24002, subdivision (a). The search was therefore lawful.

BACKGROUND

I.

THE FOURTH AMENDED FELONY COMPLAINT

Chargualaf was charged in a fourth amended felony complaint with one count of possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1)), one count of carrying a loaded, unregistered firearm in public (Pen. Code, § 25850, subds. (a) & (c)(6)), one count of possession of a controlled substance while armed with a loaded firearm (Health & Saf. Code, § 11370.1, subd. (a)), one count of access card counterfeiting (Pen. Code, § 484i, subd. (c)), four counts of acquiring access card account information (Pen. Code, § 484e, subd. (d)), and six counts of identity theft (Pen. Code, § 530.5, subd. (c)(1)). The complaint alleged Chargualaf, on six separate occasions, had been previously convicted of a felony for which he served a separate prison term within the meaning of Penal Code section 667.5, subdivision (b).

II.

AT THE PRELIMINARY HEARING, CHARGUALAF UNSUCCESSFULLY MOVES TO SUPPRESS EVIDENCE RECOVERED FOLLOWING THE TRAFFIC STOP.

During the preliminary hearing, Chargualaf moved to suppress evidence from the traffic stop pursuant to Penal Code section 1538.5. The evidence presented at the preliminary hearing included the following.

At approximately 2:05 a.m. on February 18, 2012, Garden Grove Police Officer Michael Viscomi was stopped in his patrol car facing westbound on Trask Avenue at the intersection of Harbor Boulevard when a 1997 Lincoln Mark VIII caught his attention. Viscomi heard and saw the bottom of the Lincoln, in an up-and-down motion, scrape the street as the vehicle traveled through the intersection, northbound on Harbor Boulevard. The Lincoln was approximately 10 to 30 feet from Viscomi's patrol car. Viscomi turned right onto Harbor Boulevard and followed the Lincoln, observing the bottom of the vehicle scrape the street at least two more times within a quarter-mile of the intersection. After concluding that the bottom portion of the Lincoln scraping the street presented an immediate safety hazard in violation of Vehicle Code section 24002, subdivision (a), Viscomi initiated a traffic stop.

Viscomi testified: "I felt that by the vehicle scraping, it posed several hazards either to the person inside that vehicle or to other persons on the roadway by continual scraping. Persons (phonetic)^[1] in the vehicle could come off from the vehicle injuring pedestrians causing other motorists to become . . . involved in an accident." Viscomi stated that the scraping could cause a fire by creating sparks.

After Chargualaf pulled over, Viscomi told him that he had been stopped because the Lincoln was scraping the street. Chargualaf stated that he knew about the

¹ Viscomi's word was unclear at the preliminary hearing. Read in context, it appears that Viscomi meant "portions" or "pieces" of the vehicle.

scraping, and that the Lincoln's "air ride" needed repair, but had not been fixed because it was going to cost him "several thousand dollars to get that repaired." After Chargualaf gave his California driver's license to Viscomi, Viscomi ran a criminal records check and determined Chargualaf was an active parolee. Viscomi had Chargualaf get out of the Lincoln in order to conduct a vehicle search pursuant to a search and seizure condition of his parole. Officer Eduardo Barajas arrived at the scene and assisted Viscomi in searching the Lincoln. During their search, Viscomi and Barajas found a loaded firearm, a hypodermic needle containing liquid that tested positive for the presence of methamphetamine, and items used to make counterfeit documents and identification cards. Chargualaf was placed under arrest.

The court denied Chargualaf's motion to suppress evidence and held Chargualaf to answer all charges in the felony complaint. The court concluded Viscomi's testimony supported the finding Viscomi had an objectively reasonable suspicion that Chargualaf had violated the Vehicle Code. Chargualaf was charged in an information with the same offenses and enhancement allegations as were contained in the fourth amended felony complaint.

III.

THE TRIAL COURT DENIES CHARGUALAF'S RENEWED MOTION TO SUPPRESS; CHARGUALAF PLEADS GUILTY TO CERTAIN OFFENSES AND APPEALS.

During a pretrial hearing, Chargualaf renewed his motion to suppress evidence pursuant to Penal Code section 1538.5, subdivision (i), relying upon the evidence presented at the preliminary hearing. The trial court denied Chargualaf's renewed motion.

Chargualaf thereafter pleaded guilty to one count each of possession of a firearm by a felon, possession of a controlled substance while armed with a loaded firearm, access card counterfeiting, acquiring access card account information, and

identity theft. He admitted all the prior prison term allegations. The trial court sentenced Chargualaf to a total jail term of five years. Chargualaf appealed.

DISCUSSION

I.

STANDARD OF REVIEW

In reviewing the denial of a suppression motion, “[w]e defer to the trial court’s factual findings, express or implied, where supported by substantial evidence.” (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) “In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment.” (*Ibid.*)

II.

SUBSTANTIAL EVIDENCE SUPPORTED THE TRIAL COURT’S FINDING VISCOMI HAD AN OBJECTIVELY REASONABLE SUSPICION OF A VEHICLE CODE VIOLATION BEFORE CONDUCTING THE TRAFFIC STOP.

A police officer may lawfully stop a motorist to conduct a brief investigation if the facts and circumstances known to the officer support at least a reasonable suspicion the driver has violated the Vehicle Code or some other law. (*People v. Superior Court* (1972) 7 Cal.3d 186, 200.) “Reasonable suspicion” is a standard less demanding than probable cause. (*Alabama v. White* (1990) 496 U.S. 325, 330.) The California Supreme Court held: “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.) Vehicle Code section 24002, subdivision (a) provides: “It is unlawful to operate any vehicle or combination of vehicles which is in an unsafe condition, or which is not safely loaded, and which present an immediate safety hazard.”

Viscomi's testimony at the preliminary hearing pointed to specific articulable facts which supported the finding he had an objectively reasonable suspicion that Chargualaf had violated the Vehicle Code at the time of the traffic stop. Viscomi testified that he had heard and seen the bottom portion of the Lincoln repeatedly scrape the street as it drove past him through the intersection. He then followed the Lincoln for a quarter-mile and saw it scrape the street at least two more times. Viscomi further testified he believed the scraping posed several potential hazards in that it could create a spark that could cause a fire or result in a piece of the vehicle falling off and injuring a pedestrian or other motorist.

Determining whether a detention was reasonable in light of the totality of the circumstances "does not deal with hard certainties, but with probabilities." (*United States v. Cortez* (1981) 449 U.S. 411, 418.) Repeated scraping between the bottom of a car and a paved road could cause objects or sparks to fly off and harm others. As pointed out by the court at the preliminary hearing: "[A]ll it takes is one time for an oil pan to be punctured, oil to be scattered throughout the highway, some type of suspension arm or piece to . . . be ejected from the vehicle"

Whether Chargualaf was actually cited for a violation of Vehicle Code section 24002, subdivision (a) is irrelevant to whether Viscomi had a reasonable suspicion Chargualaf had violated that statute. "A traffic stop is lawful at its inception if it is based on a reasonable suspicion that *any* traffic violation has occurred, even if it is ultimately determined that no violation did occur." (*Brierton v. Department of Motor Vehicles* (2005) 130 Cal.App.4th 499, 510.)

Absent other circumstances that would dispel an officer's suspicion or resolve an ambiguity in the vehicle's conformance with applicable laws, the officer may stop the vehicle and investigate without violating the driver's rights under the Fourth Amendment to the United States Constitution. (*People v. Dotson* (2009) 179 Cal.App.4th 1045, 1052.) No evidence showed the existence of any circumstances that would have

dispelled Viscomi's suspicion that the Lincoln presented an immediate safety hazard. Chargualaf acknowledged the scraping problem to Viscomi, stating that the Lincoln's air ride needed repair. Chargualaf's statement to Viscomi confirmed the Lincoln's defect was conspicuous. Chargualaf's acknowledgement and Viscomi's observations support the finding Viscomi had an objectively reasonable suspicion the Lincoln was unsafe and presented an immediate safety hazard in violation of Vehicle Code section 24002, subdivision (a). The vehicle search conducted thereafter was lawful pursuant to the search and seizure condition of Chargualaf's parole.

Chargualaf contends the trial court erred in denying his renewed motion to suppress evidence because Viscomi did not see any parts fly off the Lincoln or sparks emanating from it. He argues the absence of such evidence precluded the finding Viscomi had an objectively reasonable suspicion the Lincoln posed an *immediate* safety hazard in violation of Vehicle Code section 24002, subdivision (a).

But, as discussed *ante*, an officer need only have a reasonable suspicion of a Vehicle Code violation to initiate a traffic stop; it is not required that the officer's suspicion be substantiated later as accurate. (*People v. Saunders* (2006) 38 Cal.4th 1129, 1136.) "[T]he officer's duty is to resolve—through investigation—any ambiguity presented as to whether the activity observed is, in fact, legal or illegal." (*Brierton v. Department of Motor Vehicles, supra*, 130 Cal.App.4th at p. 510.) While the presence of sparks or flying objects would have increased the risk of harm to other motorists and pedestrians, the objective risk of danger was still present in this case even though Viscomi observed neither. These facts were sufficient to create a reasonable suspicion that the Lincoln was unsafe and presented an immediate safety hazard, and thereby justified Viscomi's traffic stop.

Chargualaf relies upon *People v. Nabong* (2004) 115 Cal.App.4th Supp. 1 and *People v. Butler* (1988) 202 Cal.App.3d 602. Both cases are distinguishable because each involved a police officer who failed to give specific facts supporting his suspicion of

illegal activity, and, instead, based his suspicion upon generalized, subjective assumptions unsupported by evidence in the record.

In *People v. Nabong, supra*, 115 Cal.App.4th at pages Supp. 2-3, a police officer conducted a traffic stop after noticing an expired registration tag on the defendant's vehicle's license plate, even though the officer saw a temporary registration sticker for the current month in the vehicle's rear window. The officer did not have a particularized belief that the defendant's car was not validly registered. (*Id.* at p. Supp. 4.) Instead, the officer based the traffic stop upon his personal experience and generalized assumption that about half of all facially valid temporary registration stickers were invalid. (*Ibid.*) The appellate division of the superior court concluded the police officer was not objectively reasonable in his suspicion of a violation when he presented no specific evidence that the defendant's facially lawful temporary registration sticker was invalid. (*Ibid.*) The appellate division reversed the trial court's order denying the defendant's motion to suppress evidence seized following the traffic stop. (*Id.* at p. Supp. 5.)

In *People v. Butler, supra*, 202 Cal.App.3d at pages 604-605, a police officer testified that he had stopped the defendant's vehicle because it had darkened windows and was driven through a high-crime. The officer stated he ““didn't like the idea of the tinted windows.”” (*Id.* at p. 605.) The appellate court reversed the order denying the defendant's motion to suppress, explaining that evidence showing only the existence of tinted glass, without evidence supporting a suspicion the tinted windows were illegal, failed to support the finding he had a reasonable suspicion of illegality to justify an investigative traffic stop. (*Id.* at pp. 606-607.)

Unlike the officers in *People v. Nabong* and *People v. Butler*, here, as explained, Viscomi gave particularized testimony that supported the reasonableness of his suspicion the Lincoln's condition violated section 24002, subdivision (a) of the

Vehicle Code. As substantial evidence supported the finding Viscomi's suspicion was reasonable, the trial court did not err by denying Chargualaf's motion to suppress.

DISPOSITION

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.