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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.

IVARS KARLIS BORSTEINS,

Defendant and Appellant.

G050415

(Super. Ct. No. 12NF1655)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
David A. Hoffer, Judge. Affirmed with directions.

Maria Leftwich, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant
Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and
Marvin E. Mizell, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

INTRODUCTION

Defendant Ivars Karlis Borsteins was convicted of possession of a controlled substance, and possession of controlled substance paraphernalia. On appeal, defendant challenges the trial court's order denying his motion to suppress evidence. We conclude the arresting officers had a reasonable suspicion that illegal activity was occurring and that defendant was the person identified by an anonymous caller as being involved in that activity. Therefore, the patdown search on defendant conducted by one of the officers was reasonable, and the trial court did not err in denying the motion to suppress the evidence found during that patdown search. We affirm the judgment.

Defendant correctly argues that the trial court's minute order contains an incorrect amount for defendant's restitution fine, pursuant to Penal Code section 1202.4, and that the correct amount is set forth in the trial court's oral pronouncement of sentence. We will direct the trial court to correct the minute order.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

About 11:30 p.m. on May 3, 2012, Officers Joel Craft and Ryan O'Neill of the Fullerton Police Department were separately dispatched to a report of a white male, in a red Honda Civic, "staking out cars" in a parking lot behind an apartment complex. When Craft arrived, he approached defendant and asked to speak with him. Defendant told Craft he was "just passing by or passing through" and he owned a red Honda Element that was parked near the red Honda Civic.

Craft thought defendant's explanation was suspicious: "This area is a high crime area, high drug use area. A lot of crime happens in this area. We go there all the time. [¶] For him to just say he's passing through is kind of suspicious to me, as a police officer. I have dealt with numerous people in that parking lot through the 15 years of my career. [¶] This parking lot is not readily accessible or you don't notice it just driving through off Commonwealth. You have to make an effort to get back into this parking lot

area. It is kind of a dark area. [¶] Just to say that he's passing through seemed odd to me. He didn't mention that he had any friends or family that lives in the area, and just to stop off the side of the road to go to this parking area is very odd and suspicious to me, as a police officer, based on my training and experience." About that time, O'Neill arrived at the scene.

Craft asked defendant if he could search him for defendant's safety and the safety of the officers; defendant refused. (Craft suspected that defendant might be in possession of tools that are used by car thieves.) O'Neill then advised defendant he was going to conduct a patdown search for weapons despite defendant's refusal. O'Neill was aware that someone staking out vehicles for burglary might be in possession of screwdrivers, knives, window punches, or other objects to break a vehicle's window or otherwise gain access to a vehicle. O'Neill was therefore concerned about his and Craft's safety.

During the patdown search, O'Neill felt what he believed was a methamphetamine pipe in defendant's left front pants pocket. O'Neill asked defendant if it was a methamphetamine pipe, to which defendant replied, "possibly." O'Neill removed the pipe from defendant's pocket, handcuffed him, and arrested him. O'Neill continued the patdown search and found three small baggies of methamphetamine in defendant's right front pants pocket.

Defendant was charged with possession of methamphetamine, a felony (Health & Saf. Code, § 11377, subd. (a)), and possession of controlled substance paraphernalia, a misdemeanor (*id.*, § 11364.1, subd. (a)). Before the information was filed, defendant filed a motion to suppress evidence, pursuant to Penal Code section 1538.5. An evidentiary hearing on the motion was conducted in conjunction with the preliminary hearing. After that hearing, the trial court denied the motion to suppress. Defendant renewed the motion to suppress before trial; the motion was again denied.

A jury found defendant guilty of both charges. The trial court suspended imposition of sentence and placed defendant on drug treatment probation pursuant to Proposition 36 (Pen. Code, § 1210 et seq.). Defendant filed a timely notice of appeal.

DISCUSSION

I.

MOTION TO SUPPRESS

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.*)

In this case, an anonymous caller stated that a white male in a red Honda Civic was staking out cars in a parking lot, which Craft and O’Neill both understood to mean that this individual was “[b]urglarizing or looking for vehicles to burglarize.” Craft reached the scene about five minutes after the call was received, and saw defendant, a white male, alone in the parking lot. Defendant was walking in the direction away from a red Honda Civic parked in the lot.

Craft’s initial contact with defendant was a consensual encounter, in which defendant’s liberty was not restrained, and during which Craft could ask defendant for identification, ask about the contents of his pockets, and request that he submit to a search, without any need for reasonable suspicion. (*Florida v. Bostick* (1991) 501 U.S. 429, 434; *People v. Franklin* (1987) 192 Cal.App.3d 935, 941.) Craft asked defendant if he owned a red Honda Civic; defendant replied that he owned a red Honda Element, and indicated where it was parked, which was near the red Honda Civic that Craft had seen on arrival. Craft also asked defendant where he was coming from; defendant replied that he “was just passing by or passing through.”

Craft found defendant's response to be odd and suspicious because (1) it was late at night, and no nearby businesses were open; (2) the parking lot was behind an apartment complex, but defendant did not indicate he lived there, or was visiting friends or family members; (3) the parking lot was dark, and could not be seen from the street; and (4) the area had a high rate of crime and narcotics traffic. These facts created reasonable suspicion for the officers to detain defendant by corroborating the anonymous caller's identity of a suspect and assertion of illegality. (*Florida v. J. L.* (2000) 529 U.S. 266, 270-272; *People v. Dolly* (2007) 40 Cal.4th 458, 470-471.)

Therefore, at the point where the consensual encounter with defendant became a detention, the officers had reasonable suspicion that defendant was the individual identified by the anonymous caller, and that some illegal activity was occurring. Further, the officers had a reasonable suspicion that defendant was in possession of tools to burglarize vehicles, which could be used as weapons, making O'Neill's patdown search of defendant reasonable. O'Neill was permitted to lawfully seize the item in defendant's front left pants pocket—which O'Neill recognized as a methamphetamine pipe—pursuant to the "plain feel" doctrine. (*Minnesota v. Dickerson* (1993) 508 U.S. 366, 375-376.)

We conclude the trial court correctly denied the motion to suppress, and we therefore affirm the judgment.

II.

RESTITUTION FINE

Defendant argues, and the Attorney General concedes, that the minute order reflects an incorrect amount for defendant's restitution fine under Penal Code section 1202.4. In the oral pronouncement of judgment, the trial court ordered defendant to pay a state restitution fine of \$240. The minute order, however, requires defendant to pay a restitution fine of \$300. At the time the crimes in this case were committed, the

statutory minimum restitution fine was \$240, though it had risen to \$300 when defendant was sentenced. (Pen. Code, § 1202.4, subd. (b)(1).)¹ Given that the oral pronouncement of judgment takes precedence over the written minute order (*People v. Farrell* (2002) 28 Cal.4th 381, 384, fn. 2; *People v. Mesa* (1975) 14 Cal.3d 466, 471), and, in light of the fact that the oral pronouncement is consistent with the statutory minimum fine applicable to defendant's crimes, we direct the trial court to correct the minute order to reflect that defendant's restitution fine is \$240.

DISPOSITION

The judgment is affirmed. We direct the trial court to correct the minute order of the sentencing hearing to reflect that defendant is ordered to pay a restitution fine, pursuant to Penal Code section 1202.4, in the amount of \$240, rather than \$300.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.

¹ "The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense. If the person is convicted of a felony, the fine shall not be less than two hundred forty dollars (\$240) starting on January 1, 2012, two hundred eighty dollars (\$280) starting on January 1, 2013, and three hundred dollars (\$300) starting on January 1, 2014, and not more than ten thousand dollars (\$10,000)." (Pen. Code, § 1202.4, subd. (b)(1).)