

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ADOLFO GOMEZ,

Defendant and Appellant.

G051163

(Super. Ct. No. 11CF1039)

O P I N I O N

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

Loleena Ansari, 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  
Teresa Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

\*

\*

\*

## INTRODUCTION

Defendant Adolfo Gomez moved to suppress evidence obtained by law enforcement personnel during and after a vehicle search following a traffic stop. After the trial court denied his motion, Gomez pleaded guilty to one count of selling or transporting a controlled substance and one count of having a false compartment for the purpose of transporting a controlled substance. Gomez'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 United States border patrol agent who conducted the traffic stop could point to specific articulable facts which, considered under the totality of the circumstances, provided objective manifestation that Gomez was transporting narcotics. The traffic stop was therefore lawful.

## FACTS

In March 2011, United States Border Patrol Agent Miguel Perez was assigned to the "San Diego Sector Smuggling Interdiction," in which he investigated, inter alia, narcotics smuggling through the United States/Mexico border, along Interstate 5 and Interstate 15, and "into the interior of the United States." On March 31, 2011, Perez was involved in an antismuggling operation and was specifically assigned to "augment" the San Clemente checkpoint by keeping "an eye out" for smuggling behavior.

Perez testified, based on his experience and training, regarding indicia of smuggling behavior. He testified drug smugglers usually drive below the speed limit to avoid attracting the attention of law enforcement. He further testified that, typically, a vehicle used for narcotic smuggling does not have tinted windows so as to avoid a traffic stop on that basis. Perez stated a vehicle used to smuggle drugs does not usually belong

to the driver but to the smuggling organization which hands over a single key to the driver. He explained that when drivers are “done with their . . . run, they usually turn the car back in, and then usually they’ll keep the key or they’ll have an extra set of keys, and they’ll just leave the car somewhere until it gets returned to them later.” Perez testified, “they’re essentially only given the key necessary to operate the car.”

About 10:30 a.m. on March 31, 2011, Perez was driving northbound on Interstate 5 in an unmarked border patrol truck when he saw Gomez driving a truck in the number two lane and traveling 20 miles per hour below the flow of traffic; Gomez was traveling at a speed of approximately 60 miles per hour in a 65-mile-per-hour traffic zone, while the “normal” traffic speed was about 80 miles per hour. Perez pulled alongside of the truck that Gomez was driving and saw that Gomez was the sole occupant of the truck. The truck windows did not have any tint. Perez could see the key in the ignition was the only key on Gomez’s key chain, along with key chain ornaments.

Perez also noticed the dashboard of the truck that Gomez was driving “looked really shiny” as though “it was wiped down with Armor All.” Perez testified that such an observation was significant because “if there’s been any tampering or anything within the area of trafficking, they will try to wipe down so there’s no smudges, make sure there’s no dirt or anything they left in the area depending on the area they’re trying to hide or they work in a certain area, they try to wipe down everything they left behind.” Perez explained drug smugglers want to remove any marks that suggest aftermarket work done on the vehicle, such as the creation of hidden compartments; those marks can be caused by overspraying, sanding, or general body work. Drug smugglers want a vehicle that “[b]lend[s] in with the motoring public.”

After making his observations of Gomez and the truck he was driving, Perez contacted his supervisor and requested a records check on the vehicle through the United States Department of Homeland Security’s database. Perez learned that Gomez drove the truck across the United States/Mexico border at 1:42 a.m. that morning. Perez

testified that during the preceding two weeks, law enforcement had noticed that “most of the [contraband] seizures were entering the country within the last 24 hours. . . . They were just fresh entries, and then they would continue northbound into the interior.” Perez learned that there had been an “entry IC alert regarding a protective order” on Gomez, but he had been released through the point of entry. Perez also learned that the database showed an alert had been placed on the truck that Gomez was driving, which was registered to Gomez. The alert stated the truck might have an aftermarket, hidden compartment built into the transmission tunnel. Another alert in the database showed the truck “was involved in narcotic smuggling.”

Based on Perez’s observations of the vehicle, Gomez’s recent border crossing and driving behaviors, and the information he received from the records check, Perez suspected Gomez was involved in narcotics smuggling. Perez conducted a traffic stop of Gomez’s truck.

#### PROCEDURAL BACKGROUND

Gomez was charged in an information with one count of selling or transporting a controlled substance in violation of Health and Safety Code section 11379, subdivision (a), and one count of having a false compartment for the purpose of transporting a controlled substance in violation of Health and Safety Code section 11366.8, subdivision (a). As to the selling or transporting of a controlled substance count, the information alleged, pursuant to Health and Safety Code section 11370.4, subdivision (b)(2), that the substance at issue exceeded four kilograms by weight or 100 liters by liquid volume.

Gomez filed a motion to suppress the following evidence, pursuant to Penal Code section 1538.5 and the Fourth Amendment to the United States Constitution:

(1) “observations made by law enforcement following its illegal detention of Gomez and the illegal search of Gomez’s vehicle”; (2) “statements made by Gomez to law

enforcement after the illegal detention and search”; and (3) “physical evidence obtained by law enforcement after its illegal detention of Gomez and the illegal search [of] Gomez’s vehicle, including but not limited to 7.45 kilograms of methamphetamine, and a Motorola cellular telephone.”

The trial court denied the motion to suppress. The court explained that the fact of the alert combined with the circumstances that Gomez had crossed the border that morning, was observed traveling below the speed limit when other cars were traveling much faster, and was traveling with a single key, showed “there’s enough here to—to constitute articulable suspicion that is necessary for the initial stop.”

Gomez thereafter pleaded guilty to both offenses as charged in the information and admitted the enhancement allegation, offering the following factual basis for his plea: “In Orange County, California, on 3/31/11 I unlawfully transported for sale methamphetamine into the State of California and possessed a false compartment with intent to conceal a controlled substance. The controlled substance exceeded four kilograms by weight.” The trial court sentenced Gomez to a total jail term of four years. Gomez 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.*)

At the hearing on Gomez’s motion to suppress, both the prosecutor and Gomez’s attorney informed the trial court that Gomez “would like to litigate . . . just the

issue of the traffic stop itself,” and not issues related to consent, the search following the traffic stop, or Gomez’s arrest. The prosecutor and Gomez’s attorney confirmed, “[i]t really just comes down to whether there was a . . . valid stop in this case.”

## II.

### *Substantial Evidence Supported the Trial Court’s Finding Perez Had an Objectively Reasonable Suspicion Gomez Was Engaged in Narcotics Smuggling Before Perez Conducted the Traffic Stop.*

A law enforcement 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 has 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; see *United States v. Cortez* (1981) 449 U.S. 411, 418 [Determining whether a detention was reasonable in light of the totality of the circumstances “does not deal with hard certainties, but with probabilities.”].)

Perez’s testimony at the hearing on the motion to suppress pointed to specific articulable facts which supported the finding he had an objectively reasonable suspicion that Gomez was engaged in illegal activity, namely, narcotics smuggling. Perez testified that before stopping Gomez’s truck, he had learned that Gomez had driven the truck across the United States/Mexico border at 1:42 a.m. that day; Perez knew that recent smuggling efforts by way of Interstate 5 began with same-day border crossings. Perez observed Gomez driving the truck under the 65-mile-per-hour speed limit, and

20 miles per hour below the speed of the flow of traffic; Perez's experience had taught him that driving below the speed limit was a common practice among smugglers hoping to avoid the attention of law enforcement. As was common with drug smugglers, Gomez's truck did not have tinted windows and Gomez had only a single key. Perez was aware that alerts had been placed in the United States Department of Homeland Security's database informing Perez that the truck that Gomez was driving was involved in narcotics smuggling and, specifically, might have a hidden compartment built into the transmission tunnel. No circumstances existed that would have dispelled Perez's suspicion that Gomez was smuggling narcotics in the truck.

In his reply brief, Gomez argues, "the alert and secret compartment tip derived from the 'Automatic Targeting System' . . . and the Homeland Security database . . . are not sufficient to support reasonable suspicion because the People failed to establish the necessary foundation regarding when and where the information came from to make it reliable." At the hearing on the motion to suppress, the trial court stated that Perez's receipt of such information probably would not have been sufficient, in and of itself, to support a reasonable suspicion finding, but "when you put that together with the fact that [the truck] crossed that same day, that same morning with the same individual driving, and again, the other information about the fact that it's traveling below the speed limit when other cars are traveling much faster and traveling with a single key, I think there's enough here to—to constitute articulable suspicion that is necessary for the initial stop."

Gomez argues, "the suspicion [Gomez] was driving with one key, because he was not the owner of the vehicle, and therefore might be involved with drug smuggling, was undercut with knowledge that [Gomez] was in fact the registered owner of the vehicle." (Capitalization & boldface omitted.) That Gomez was the registered owner of the truck does not negate the possibility the truck actually belonged to a narcotics smuggling organization which registered vehicles in drivers' names to avoid

detection. Perez was suspicious that Gomez had a single key on his key chain because, in Perez's experience, that was unusual unless the person was engaged in narcotics smuggling activities.

Perez's particularized testimony therefore supported the finding he had an objectively reasonable suspicion that Gomez was engaged in narcotics smuggling at the time Perez conducted the traffic stop. The trial court did not err by denying Gomez's motion to suppress.

#### DISPOSITION

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.