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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN CARLOS PICHARDO-PEREZ,

Defendant and Appellant.

H036051

(Monterey County

Super. Ct. No. SS101731)

**I. STATEMENT OF THE CASE**

Defendant Juan Carlos Pichardo-Perez pleaded no contest to possession of methamphetamine and resisting a peace officer. (Health & Saf. Code, § 11377, subd. (a); Pen. Code, § 148, subd. (a)(1).) The court suspended imposition of sentence and placed him on probation for three years. On appeal from the probation order, defendant claims the court erred in denying his motion to suppress.

We affirm the probation order.

**II. FACTS<sup>1</sup>**

On July 17, 2010, around 10:35 a.m., Officer Matthew Blackmon of the Seaside Police Department was patrolling along Hamilton Avenue in Seaside. As he passed a lawfully parked car, he noticed a man, whom he later identified as defendant, in the

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<sup>1</sup> Our summary is based on the testimony presented at the preliminary hearing on which the motion to suppress was based.

driver's seat slouch down. Suspicious, Officer Blackmon circled back, and defendant again slouched down as he drove by. He thought defendant might have been trying to hide from him, and so he parked behind the car, which was running. As he approached defendant's window, he saw that defendant had some plastic in his hand and a wallet on his lap. When Officer Blackmon reached him, defendant closed the wallet and held it. Officer Blackmon asked how he was doing and whether he lived in the area or had friends there. Defendant said he did not live there but had friends who lived on the street. Officer Blackmon then asked defendant for a driver's license or some identification. When defendant said he did not have any, Officer Blackmon pointed to the wallet and asked if he had any I.D. in it. Defendant immediately opened it and produced a Mexican identification card. As he did, two pieces of plastic, which appeared to be the cut corners from a plastic bag, fell from defendant's hand. Based on his narcotic training, Officer Blackmon suspected that the pieces of plastic were drug bindles and asked defendant if he had drugs on him or in the car. When defendant put his wallet on the console, Officer Blackmon announced that he was going to conduct a search. Defendant immediately grabbed his wallet. Officer Blackmon directed him to exit the car and told him to surrender the wallet or put it on top of the car. Defendant refused, and when Officer Blackmon reached for it, defendant pulled it away. There was a brief struggle for it. Officer Blackmon pinned defendant against the car and handcuffed him. He then searched the wallet and inside found a folded dollar bill containing what turned out to be .1 of a gram of methamphetamine.

### **III. DENIAL OF THE MOTION TO SUPPRESS**

Defendant contends that Officer Blackmon unreasonably, and therefore unlawfully, detained him and this unlawful detention tainted the evidence that was later discovered in defendant's wallet. Accordingly, defendant claims the court erred in denying his motion to suppress the methamphetamine.

## A. Applicable Principles

“The Fourth Amendment . . . prohibits seizures of persons, including brief investigative stops, when they are ‘unreasonable.’ [Citations.]” (*People v. Souza* (1994) 9 Cal.4th 224, 229.)

“Police contacts with individuals may be placed into three broad categories ranging from the least to the most intrusive: consensual encounters that result in no restraint of liberty whatsoever; detentions, which are seizures of an individual that are strictly limited in duration, scope, and purpose; and formal arrests or comparable restraints on an individual’s liberty. [Citations.]” (*In re Manuel G.* (1997) 16 Cal.4th 805, 821.)

This case involves the distinction between a temporary detention and a consensual encounter.

A temporary detention for questioning or investigation may be justified by circumstances falling short of the probable cause needed for an arrest. (*Terry v. Ohio* (1968) 392 U.S. 1, 22.) To justify such a detention, an officer need only have a reasonable suspicion of criminal activity, more specifically, “ ‘the circumstances known or apparent to the officer must include specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity. Not only must he subjectively entertain such a suspicion, but it must be objectively reasonable for him to do so: the facts must be such as would cause any reasonable police officer in a like position, drawing when appropriate on his training and experience [citation], to suspect the same criminal activity and the same involvement by the person in question.’ ” (*People v. Loewen* (1983) 35 Cal.3d 117, 123.) Because the officer’s subjective suspicion must be objectively reasonable, “ ‘an investigative stop or detention predicated on mere curiosity, rumor, or hunch is unlawful, even though the officer may be acting in complete good faith. [Citation.]’ [Citation.] But where a reasonable suspicion of

criminal activity exists, ‘the public rightfully expects a police officer to inquire into such circumstances “in the proper exercise of the officer’s duties.” [Citation.]’ [Citation.]” (*People v. Wells* (2006) 38 Cal.4th 1078, 1083.)

Unlike a temporary detention, a consensual encounter does not require any justification and does not trigger Fourth Amendment scrutiny because it is not a seizure or a constitutionally cognizable restraint on a person’s liberty. “Only when the officer, by means of physical force or show of authority, in some manner restrains the individual’s liberty, does a seizure occur.” (*In re Manuel G.*, *supra*, 16 Cal.4th at p. 821.) Conversely, “[a]s long as a reasonable person would feel free to disregard the police and go about his or her business, the encounter is consensual and no reasonable suspicion is required on the part of the officer.” (*Ibid.*; *Florida v. Bostick* (1991) 501 U.S. 429, 434.)

### **B. The Suppression Hearings**

At the suppression hearing, defense counsel argued that when Officer Blackmon stopped his car behind defendant’s, approached the window, and asked him questions, he effected a temporary detention, which was based solely on the fact that he had seen defendant slouch twice. Counsel claimed that defendant’s allegedly furtive gestures did not support a reasonable suspicion that he was involved in criminal activity, and therefore, the detention was unjustified and violated defendant’s Fourth Amendment rights.

After recounting the basic facts, the magistrate found that the fact that defendant was sitting in a car that was running and did not have a driver’s license and the officer saw two small plastic bags fall from defendant’s hand established probable cause for the search.

Defendant renewed his motion to suppress, arguing again that the detention was unlawful because it was based solely on the fact he slouched twice. The court accepted the magistrate’s factual determination that Officer Blackmon decided to conduct a search after he saw the two plastic bindles drop from defendant’s hand. The court found that the

encounter was consensual until Officer Blackmon saw the bindles drop, and at that time, all of the circumstances taken together supported a finding of probable cause to conduct the search, at which time defendant was formally detained.<sup>2</sup>

### C. Standard of Review

“An appellate court’s review of a trial court’s ruling on a motion to suppress is governed by well-settled principles. [Citations.] [¶] In ruling on such a motion, the trial court (1) finds the historical facts, (2) selects the applicable rule of law, and (3) applies the latter to the former to determine whether the rule of law as applied to the established facts is or is not violated. [Citations.] ‘The [trial] court’s resolution of each of these inquiries is, of course, subject to appellate review.’ [Citations.] [¶] The court’s resolution of the first inquiry, which involves questions of fact, is reviewed under the deferential substantial-evidence standard. [Citations.] Its decision on the second, which is a pure question of law, is scrutinized under the standard of independent review. [Citations.] Finally, its ruling on the third, which is a mixed fact-law question that is however predominantly one of law, . . . is also subject to independent review.” (*People v. Williams* (1988) 45 Cal.3d 1268, 1301; see also *People v. Ayala* (2000) 23 Cal.4th 225,

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<sup>2</sup> Where a suppression motion is made before a magistrate judge in conjunction with a preliminary hearing, the magistrate acts as the trier of fact. (*People v. Laiwa* (1983) 34 Cal.3d 711, 718, superseded by statute on another ground as stated in *People v. Trujillo* (1990) 217 Cal.App.3d 1219, 1223.)

Moreover, where, as here, the matter is raised a second time in the superior court on the basis of the preliminary hearing transcript, the superior court is bound by the magistrate’s factual findings and must accept them so long as they are supported by substantial evidence. (Pen Code, § 1538.5, subd. (i); *People v. v. Ramsey* (1988) 203 Cal.App.3d 671, 678-679 & fn. 2.) In such circumstances, the superior court acts as a reviewing court. In performing this function, the court must respect the magistrate’s ability “to judge credibility, resolve conflicts, weigh evidence, and draw inferences . . . .” It must also draw “all presumptions in favor of the magistrate’s factual” findings and uphold “them if they are supported by substantial evidence.” (*People v. Bishop* (1993) 14 Cal.App.4th 203, 214.)

On appeal from the superior court’s ruling, we are similarly bound by the magistrate’s factual findings. (*People v. Trujillo, supra*, 217 Cal.App.3d at p. 1224.)

255.) All presumptions favor the trial court's exercise of its power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence, and draw factual inferences, “ ‘and the trial court's findings on such matters, whether express or implied, must be upheld if they are supported by substantial evidence.’ ” (*People v. Leyba* (1981) 29 Cal.3d 591, 596-597, quoting *People v. Lawler* (1973) 9 Cal.3d 156, 160.)

#### **D. Discussion**

On appeal, defendant claims that Officer Blackmon's refusal to accept defendant's statement that he did not have any identification together with his “his command to [defendant] to retrieve identification from his wallet” amounted to a show of force, and no reasonable person would have felt free to leave. Thus, he was detained at that time. Defendant argues that the only basis for Officer Blackmon to approach, ask why he was in the area, and demand identification was that defendant had slouched when he drove by. Defendant claims that these circumstances do not support a reasonable suspicion that defendant was engaged in criminal activity.

In deciding whether an encounter was consensual or constituted a detention, we look at all the circumstances to determine whether a reasonable person would feel free to terminate the encounter or not free to do so. The focus is on “the coercive effect of police conduct as a whole, rather than emphasizing particular details of that conduct in isolation. [Citation.]” (*In re Manuel G.*, *supra*, 16 Cal.4th at p. 821, citing *Michigan v. Chesternut* 486 U.S. 567, 573.)

The United States Supreme Court has repeatedly explained that even when police have no reason to suspect a particular individual, approaching him or her and requesting identification or asking questions related to his or her identity does not, by itself, constitute a Fourth Amendment seizure as long as the police do not convey a message that compliance with their requests is required. (*Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty.* (2004) 542 U.S. 177, 185 [questioning is an essential part of police

investigations, and officers are free to ask a person for identification without implicating the Fourth Amendment]; *United States v. Drayton* (2002) 536 U.S. 194, 200-201; *Florida v. Bostick*, *supra*, 501 U.S. at pp. 434-435; *Immigration and Naturalization Service v. Delgado* (1984) 466 U.S. 210, 218; *United States v. Mendenhall* (1980) 446 U.S. 544, 555. *Terry v. Ohio* (1968) 392 U.S. 1, 34 (conc. opn. of Harlan, J.).) California courts have similarly ruled that a request for identification does not transform into a detention what would otherwise be a consensual encounter. (*People v. Rivera* (2007) 41 Cal.4th 304, 309; *People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1370; *People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1227; *People v. Lopez* (1989) 212 Cal.App.3d 289, 291.)

Indeed, “[w]here a consensual encounter has been found, police may inquire into the contents of pockets [citation]; ask for identification [citation]; or request the citizen to submit to a search [citation]. It is not the nature of the question or request made by the authorities, but rather the *manner or mode* in which it is put to the citizen that guides us in deciding whether compliance was voluntary or not.” (*People v. Franklin* (1987) 192 Cal.App.3d 935, 941, italics added.) Circumstances that might convey that a request is mandatory or that might make a reasonable person not feel free to terminate an encounter with the police can include “the presence of several officers, an officer’s display of a weapon, some physical touching of the person, or the use of language or of a tone of voice indicating that compliance with the officer’s request might be compelled. [Citations.]” (*In re Manuel G.*, *supra*, 16 Cal.4th at p. 821.)

With these principles in mind, we note that when Officer Blackmon parked, he did not block or otherwise prevent defendant from leaving. Officer Blackmon was alone, and he did not display a weapon. He simply asked defendant some questions and defendant answered them. Officer Blackmon requested a driver’s license or some identification, and defendant said he did not have any. At this point, and contrary to defendant’s claim, Officer Blackmon did not “command” defendant to look in his wallet for identification or demand that he do so. Nor did he reach for defendant’s wallet. He only pointed to it and

“kind of asked” if he had any identification there.<sup>3</sup> The record does not suggest that Officer Blackmon used a tone that implied a command or order to look in the wallet. Nor does the record suggest that the circumstances somehow became so coercive that defendant could not again have simply answered that he had no identification there either.

In sum, we do not find that asking defendant whether he had any identification inside his wallet transformed the consensual encounter into a detention. Simply put, in the absence of some increased display of authority, Officer Blackmon’s follow up question conveyed no more of a command or order to do anything than his initial questions did. In our view, a reasonable person would not have felt that he or she were being compelled or commanded to open and look inside his or her wallet or that his or her liberty was in some way being restrained or restricted by that follow up question. (Compare with *People v. Garry* (2007) 156 Cal.App.4th 1100 [detention where defendant had police spotlight on him while being asked pointed questions about his parole or probationary status]; *People v. McKelvy* (1972) 23 Cal.App.3d 1027 [detention where defendant had spotlight on him and was surrounded by three officers, one with a shot gun].)<sup>4</sup> Accordingly, we reject defendant’s claim that the court erred in denying his motion to suppress.

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<sup>3</sup> Officer Blackmon testified, “I asked for his driver’s license or any identification and he told me he didn’t have any and I pointed to the wallet and I kind of asked him, you don’t have an I.D. in his wallet or inside your wallet.”

<sup>4</sup> Defendant does not claim that Officer Blackmon lacked probable cause to search the wallet after the two bindles dropped from his hand when he produced his identification card. Nor does he challenge the order denying his motion to suppress on any other ground.

**IV. DISPOSITION**

The probation order is affirmed.

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RUSHING, P.J.

WE CONCUR:

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PREMO, J.

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ELIA, J.