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

THE PEOPLE,

Plaintiff and Respondent,

v.

ANGELICA HILLDALE,

Defendant and Appellant.

H040811

(Santa Cruz County

Super. Ct. No. F23970)

INTRODUCTION

After the trial court denied her motion to suppress evidence, defendant Angelica Hilldale pleaded no contest to possessing heroin for sale (Health & Saf. Code, § 11351) and possessing hydrocodone for sale (Health & Saf. Code, § 11351). The court suspended imposition of sentence and placed her on formal probation for three years.

On appeal, defendant contends that the trial court erred in denying her motion to suppress evidence pursuant to Penal Code section 1538.5.¹ She also contends that the court erred by failing to calculate her presentence credits. Lastly, she argues that the sentencing minute order must be modified to strike an association probation condition, as the condition was not a part of the court's oral pronouncement. The Attorney General concedes that the court erred in calculating presentence credits and also agrees that the

¹ All further statutory references are to the Penal Code, unless otherwise stated.

association probation condition was not mentioned in the court's oral pronouncement. For the reasons stated below, we will reverse and remand with direction to the trial court to recalculate the presentence credits and to strike the association condition from the minute order dated March 19, 2014.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Underlying Facts and the Suppression Hearing

On December 30, 2012, around 11:00 p.m., Santa Cruz Police Officer Abraham Rodriguez was dispatched to an area near West Cliff Drive and Chico Avenue to investigate a reported domestic disturbance. Officer Rodriguez was driving a marked patrol car and was in full uniform at the time. The anonymous reporting party stated that the occupants of a white Honda and a silver Nissan, a black male and black female, were exchanging items back and forth and were arguing with each other. The reporting party also mentioned that there was loud music coming from the two cars.

When Officer Rodriguez arrived at the reported location, he and another officer, Officer Cecena,² located a silver Nissan and white Honda Prelude parked on Chico Avenue. The two cars were empty, and there were no signs of a domestic disturbance or loud music. Officer Rodriguez directed Officer Cecena to continue onto West Cliff Drive. Soon thereafter, Officer Cecena radioed that she located two cars with a similar description at a parking lot nearby.

Officer Rodriguez did not activate his emergency lights when he arrived at the parking lot. Officer Cecena was waiting for a cover officer and had not yet made contact with any of the cars' occupants.

The parking lot contained six marked stalls and was located in a cutout on West Cliff Drive. A white Infiniti and a silver Nissan Ultima were parked in two of the stalls, with one stall between the two cars. The front side of the cars faced the ocean. A black

² Officer Cecena's first name is unknown from the record.

male and a black female were inside the Infiniti. Defendant, a white female, was in the driver's seat of the Nissan. There were no signs of a domestic disturbance or loud music coming from the cars at the time the officers arrived at the scene.

The officers got out of their cars and made contact with the occupants of the Infiniti. While Officers Rodriguez and Cecena were talking to the occupants of the Infiniti, Sergeant Gregory Crofts arrived at the scene in a marked patrol car. He did not have his emergency lights activated at the time. Sergeant Crofts parked his car on West Cliff Drive, and then walked up to the driver's side of the Nissan to talk to defendant. He was in full uniform at that time. Sergeant Crofts testified that he could not recall if he had turned on his spotlight, nor could he recall whether any of the other officers' spotlights were illuminating the Nissan and the Infiniti. He testified, however, that it was standard procedure for an officer to illuminate a car during nighttime hours if he or she was going to make contact with a driver. Based on his training and experience, he believed he would have illuminated the cars at that time.

When Sergeant Crofts approached defendant, her car was not running and the window was partially down so that he was able to speak to her. Sergeant Crofts asked defendant what her involvement was with the occupants of the Infiniti, and he asked her for identification. He described his tone as "nice." Defendant responded that she had no involvement with the other individuals. Sergeant Crofts noticed that defendant was "fidgeting around in her car, kind of nervous when she spoke with [him]" and her voice was "slow, slurred, deliberate." Based on these observations, Sergeant Crofts was concerned that defendant had been or would soon drive under the influence.

Sergeant Crofts asked defendant for her identification again. Defendant leaned over the passenger side floorboard, put her purse on her lap, and reached inside her purse with her left hand while using her right hand to keep the purse partially closed. As she searched her purse with her left hand, she continued to look at the officer and not at her purse. Sergeant Crofts believed that defendant's actions were "kind of odd." After

rummaging through her purse, she told the officer that she could not find her identification. Sergeant Crofts then told defendant to put her hands on the steering wheel because he was concerned for his safety.

Officer Rodriguez heard Sergeant Crofts give commands to the driver and walked over to the Nissan to cover him. As Officer Rodriguez approached the passenger side door of the Nissan, he saw in plain view a burnt marijuana cigarette inside a mason jar on the center console. Officer Rodriguez also noticed a “nugget of marijuana” underneath the brake lever of the center console, some loose marijuana, and a pill. Officer Rodriguez informed Sergeant Crofts of what he observed. Sergeant Crofts was not able to see these items from his vantage point.

Sergeant Crofts asked defendant to open the door and step out of the car. Defendant unlocked the driver’s door and leaned over toward the passenger side of the car. Sergeant Crofts opened the door, took defendant’s left hand, and pulled her out of the car. He handcuffed her and had her sit on the curb next to the car.

Sergeant Crofts performed a search of the car and found remains of a marijuana cigarette on the center console, “shake” marijuana, some bud marijuana, and a sealed bottle of champagne. He also found a yellow pill, but accidentally hit it, causing it to fall between the center console and the seat. Sergeant Crofts also searched defendant’s purse and found a bottle of oxycontin that was issued to another person, a couple of other unmarked prescription bottles containing pills, a bag of pills, and \$1,192 in cash. Sergeant Crofts then searched the rest of the car and found two baggies of marijuana inside the center console, a mason jar with a little bit of marijuana inside, two digital scales, two cell phones, and more marijuana in a sandwich bag in the driver’s side door. Sergeant Crofts also found a backpack in the back seat containing a tall plastic container full of marijuana and a sealed clear plastic bag of marijuana.

Sergeant Crofts arrested defendant, and Officer Cecena searched her person. Officer Cecena found multiple quantities of crack cocaine and heroin on defendant’s

person. Sergeant Crofts moved his patrol car closer to defendant's car, and then placed defendant in the patrol car. During the entire encounter with defendant, none of the three officers drew their weapons.

At the hearing, Officer Rodriguez testified on direct examination that he parked his car against the curb on West Cliff Drive. He stated that his patrol car was parked perpendicular to the two cars, specifically behind and off to side of the Infiniti with about one-car length of space away. He believed that Officer Cecena had also parked on the side of the road on West Cliff Drive, but on the opposite side of the lot from his patrol car. Officer Rodriguez testified that Sergeant Crofts parked his car next to Officer Cecena's car, so that all three patrol cars were parked "front to end" in a "parallel fashion."

Sergeant Crofts testified on cross examination that he parked his patrol car in the westbound lane of traffic. He stated that there was no shoulder on West Cliff Drive. Sergeant Crofts testified that Officer Cecena's car was parked west and on the other side of the parking lot from where he had parked his car. He believed that Officer Cecena parked in the eastbound lane of traffic. Sergeant Crofts also recalled that Officer Rodriguez's car was parked near Officer Cecena's car. Sergeant Crofts testified that both lanes of traffic were obstructed by the officers' cars, however, none of the patrol cars were blocking in defendant's car when he first arrived on scene. On redirect examination, Sergeant Cross testified that it was possible for a car to pass through West Cliff Drive on either direction because there was "enough room between [Officer Cecena and Officer Rodriguez's] cars parked in the eastbound lane and [Sergeant Crofts's] car in the westbound lane for traffic to come through."

Defendant testified at the hearing that she was sitting in her car when the Infiniti pulled up next to her. Less than a minute later, the officers shined a bright spotlight on her, which made it so that she "couldn't really see too well." She testified there was a

police car was “right behind” her car that was shining the bright light on her. She also stated that she was not able to move her car because she was “blocked there.”

At the conclusion of the hearing and after argument by the parties, the trial court denied the motion to suppress. In ruling on the motion, the court noted the discrepancy between Sergeant Crofts’s testimony and Officer Rodriguez’s testimony regarding the way the officers parked their cars. However, the court stated that in neither situation, a patrol car blocked defendant’s car from exiting. Additionally, the court stated that though defendant said there was a spotlight shining on her, she did not clearly articulate that she was blocked in by the patrol cars. The court stated “[s]o if the spotlight is not established to be the blocking, then once Sergeant Crofts walked up to Ms. Hilldale, who was seated in her car, he had the right to ask her for her identification and what she was doing there.” The court thus found that Sergeant Crofts’s initial interaction with defendant was a consensual encounter and that the officers had reasonable suspicion to detain defendant once Officer Rodriguez saw the marijuana in plain view.

B. The Charges, Plea Agreement, and Sentence

The district attorney charged defendant with possessing cocaine base for sale (Health & Saf. Code, § 11351.5; count 1), possessing heroin for sale (Health & Saf. Code, § 11351; count 2), possessing hydrocodone for sale (Health & Saf. Code, § 11351; count 3), possessing methadone for sale (Health & Saf. Code, § 11351; count 4), and possessing marijuana for sale (Health & Saf. Code, § 11359; count 5). As to count 1, the district attorney also alleged that defendant possessed more than 28.5 grams of cocaine and more than 57 grams of a substance containing cocaine (§ 1203.073, subd. (b)(1)).

On January 2, 2014, following the denial of her motion to suppress, defendant pleaded no contest to counts 2 and 3. The other counts were dismissed.

On March 19, 2014, the trial court suspended imposition of sentence and placed her on probation for three years. The court imposed various terms and conditions, including a condition that she complete a 180-day residential treatment program.

DISCUSSION

A. The Trial Court Properly Denied the Motion to Suppress

Defendant argues that the trial court erred in denying her motion to suppress because she was unlawfully detained before Officer Rodriguez saw the contraband in plain view.

“In ruling on a motion to suppress, the trial court must find the historical facts, select the rule of law, and apply it to the facts in order to determine whether the law as applied has been violated. [Citation.] We review the court’s resolution of the factual inquiry under the deferential substantial evidence standard. The ruling on whether the applicable law applies to the facts is a mixed question of law and fact that is subject to independent review. [Citation.]” (*People v. Ramos* (2004) 34 Cal.4th 494, 505.)

The Fourth Amendment guarantees the right of people to be secure against unreasonable searches and seizures. (U.S. Const., 4th Amend.; *People v. Robles* (2000) 23 Cal.4th 789, 794.) A seizure within the meaning of the Fourth Amendment occurs “whenever a police officer ‘by means of physical force or show of authority’ restrains the liberty of a person to walk away. [Citation.]” (*People v. Souza* (1994) 9 Cal.4th 224, 229 (*Souza*), quoting *Terry v. Ohio* (1968) 392 U.S. 1, 19, fn. 16.) “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.] Our present inquiry concerns the distinction between consensual encounters and detentions. Consensual encounters do not trigger Fourth Amendment scrutiny. [Citation.] Unlike detentions, they require no articulable suspicion that the person has committed or is about to commit a crime. [Citation.]

“The United States Supreme Court has made it clear that a detention does not occur when a police officer merely approaches an individual on the street and asks a few

questions. [Citation.] As 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. 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. [Citations.] '[I]n order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.' [Citation.] This test assesses the coercive effect of police conduct as a whole, rather than emphasizing particular details of that conduct in isolation. [Citation.] Circumstances establishing a seizure might include any of the following: 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.] The officer's uncommunicated state of mind and the individual citizen's subjective belief are irrelevant in assessing whether a seizure triggering Fourth Amendment scrutiny has occurred. [Citation.]" (*In re Manuel G.* (1997) 16 Cal.4th 805, 821 (*Manuel G.*).

Viewed in the light most favorable to the ruling below, the evidence before the trial court established that the first two officers on the scene initially approached the occupants inside the Infiniti and that no one made contact with defendant until Sergeant Crofts arrived later at the scene. Sergeant Crofts then walked up to defendant and used a "nice" tone to ask her about her possible involvement with the individuals in the Infiniti. There was no evidence that any of the officers drew their guns, turned on their emergency lights, used forceful language or tone, or used any other display of force that would turn the encounter into a detention. (See *Manuel G.*, *supra*, 16 Cal.4th at p. 821.)

Defendant contends that she was detained before Sergeant Crofts made contact, pointing to the fact that she was in a small parking lot facing the ocean, there were

multiple patrol cars and officers at the location, and she was either blocked in by one of the patrol cars or she was “blinded by” a spotlight so that she believed she was blocked by a patrol car. She relies on *People v. Wilkins* (1986) 186 Cal.App.3d 804, 809 (*Wilkins*), *People v. Jones* (1991) 228 Cal.App.3d 519 (*Jones*), and *People v. Bailey* (1985) 176 Cal.App.3d 402 (*Bailey*) to argue that she was detained. *Wilkins*, *Jones*, and *Bailey* are distinguishable from the instant case.

In *Wilkins, supra*, 186 Cal.App.3d at page 807, the officer drove through a parking lot in the evening and parked his car diagonally behind the defendant’s station wagon “so that he was ‘. . . essentially blocking that exit of the station wagon.’ ” This court concluded that the defendant was detained because the officer in that case “stopped his marked patrol car behind the parked station wagon in such a way that the exit of the parked car was prevented.” (*Id.* at p. 809.) In *Jones, supra*, 228 Cal.App.3d at page 523, the appellate court found the defendant was detained where an officer pulled his patrol car to the wrong side of the road and parked diagonally against the traffic about 10 feet away from the defendant. Additionally, the officers in that case directed the defendant, who was walking away, to stop. (*Id.* at pp. 522-523.) In *Bailey, supra*, 176 Cal.App.3d at page 404, the appellate court concluded that a detention occurred when a police officer pulled behind a car in a parking lot and turned on the emergency lights.

Unlike the cases cited by defendant, the officers in this case did not block defendant’s exit. The evidence shows that none of the officers parked their patrol cars directly behind defendant’s car or in any way that physically obstructed defendant’s exit. Although the officers parked their cars in both lanes of traffic, the evidence shows that there was enough space between the parked patrol cars so that a car could get through on either side of West Cliff Drive. Moreover unlike *Jones, supra*, 228 Cal.App.3d 519 and *Bailey, supra*, 176 Cal.App.3d at page 404 the officers did not command defendant to “stop” or use their emergency lights at any time. Rather, the evidence does not show that the officers used any such coercive conduct or display of authority that would make a

reasonable person believe that he or she was not free to leave. (See *Manuel G.*, *supra*, 16 Cal.4th at p. 821.) Furthermore, though it is unclear from the evidence whether the officers illuminated defendant's car with a spotlight, in any event, the use of a spotlight alone does not turn a consensual encounter into a detention. (*People v. Perez* (1989) 211 Cal.App.3d 1492, 1496.) "While the use of high beams and spotlights might cause a reasonable person to feel himself the object of official scrutiny, such directed scrutiny does not amount to a detention. [Citations.]" (*Ibid.*)

Defendant also argues that Sergeant Crofts's initial contact constituted a detention. She cites to *People v. Spicer* (1984) 157 Cal.App.3d 213, 219 (*Spicer*), where the court found that a detention occurred where the defendant was a passenger in a car stopped for a traffic violation. In that case, the officers pulled over the driver of the car at 1:30 a.m. after observing the car swerve. (*Id.* at p. 216.) The officers instructed the driver to exit the car to perform a sobriety test, while another officer approached the defendant, immediately asked her for her driver's license without any explanation, and then illuminated her purse with a flashlight as she searched for her license. (*Ibid.*)

Unlike *Spicer*, where the police had already initiated contact with the driver before speaking with the defendant, the encounter in this case did not begin with a traffic stop. Additionally, the initial contact here did not begin with immediate demands. Rather, in this case, defendant was sitting in the driver's seat of her own car when Sergeant Crofts walked up, asked her some questions in a "nice" tone through her partially opened window, and asked her for her identification. "[I]t is quite clear police do not need to have a reasonable suspicion in order to ask questions or request identification." (*People v. Lopez* (1989) 212 Cal.App.3d 289, 291.) Moreover, Sergeant Crofts's command to defendant to put her hands on the steering wheel did not transform the consensual encounter into a detention. (See *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1239 ["Telling persons to keep their hands in sight is not the same as telling them to stay."])

Thus, under the totality of circumstances, we conclude that the initial encounter was not a detention.

Even if we assume that Sergeant Crofts's conduct, particularly his second request for identification and his command to defendant to place her hands on the steering wheel, constituted a detention, Sergeant Crofts had reasonable suspicion to detain defendant. A police officer may temporarily detain a suspect "based only on a 'reasonable suspicion' that the suspect has committed or is about to commit a crime." (*People v. Bennett* (1998) 17 Cal.4th 373, 387.) "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." (*Souza, supra*, 9 Cal.4th 224, 231.)

Sergeant Crofts observed that defendant was fidgeting in her car, was exhibiting nervous behavior, was speaking in a "slow, slurred, and deliberate" way. Based on these observations, Sergeant Crofts reasonably believed that defendant was under the influence at that time. (See *In re H.M.* (2008) 167 Cal.App.4th 136, 144 [nervous, evasive behavior is a pertinent factor in determining reasonable suspicion].) Additionally, Sergeant Crofts observed that defendant's conduct when she searched her purse for identification was notably "kind of odd." Specifically, she reached inside her purse with her left hand while keeping the purse partially closed with her right hand, and she continued to look at the officer and not her purse while she searched for her identification. Under the totality of circumstances, Sergeant Crofts had reasonable suspicion to justify a brief investigative detention. (*Souza, supra*, 9 Cal.4th at p. 231.)

In conclusion, the trial court did not err in finding that there was no Fourth Amendment violation. Thus the trial court properly denied defendant's motion to suppress.

B. The Trial Court Erred in Calculating the Presentence Credits

Defendant contends and the Attorney General concedes that remand is necessary because the trial court failed to properly calculate defendant's presentence credits.

During the sentencing hearing on March 19, 2014, the trial court placed defendant on probation and ordered her to complete a 180-day residential treatment program or to serve 270 days in actual custody if she failed to complete the treatment program. The court then asked the parties whether there were any credits. Defense counsel responded that the probation report stated 13 days of credit, but counsel calculated 18 days of credit for time previously served. The probation officer replied that defendant served 14 days of credit for time served at most. The court stated that it would readdress the presentence credit issue at the May 8, 2014 hearing. However, at the May 8, 2014 hearing, the trial court did not readdress the presentence credits calculation issue.

The trial court is required "to determine the date or dates of any admission to, and release from, custody prior to sentencing and to calculate the total number of days to be credited." (§ 2900.5, subd. (d).) As it appears that the trial court did not readdress the presentence credit issue and because the record does not allow us to calculate the correct amount of presentence credit, we will remand the matter to the trial court with direction to resolve that issue and enter a new award of presentence credits.

C. The Minute Order Shall Be Corrected to Conform with the Trial Court's Oral Pronouncement

Lastly, defendant argues that the probation condition prohibiting association with "persons whose behavior might lead to criminal activities" must be stricken as the trial court did not include this condition in its oral pronouncement. Alternatively, defendant argues that the probation condition is unconstitutionally vague. The Attorney General agrees that the trial court did not orally pronounce or impose the association condition.

At the sentencing hearing, the trial court placed defendant on three years formal probation, and it orally stated each of the imposed probation conditions on the record.

During this oral pronouncement, the trial court did not mention an association condition. The sentencing minute order, however, reflects that the court imposed an association condition.

Where there is a discrepancy between the minute order and the oral pronouncement of judgment, the oral pronouncement controls. (*People v. Farrell* (2002) 28 Cal.4th 381, 384, fn. 2.) As the condition was not included in the oral pronouncement, we direct the trial court to strike that condition (condition 5) from the March 19, 2014 minute order.³

DISPOSITION

The judgment is reversed and remanded to the trial court with directions to calculate and award defendant presentence credits and to strike the association condition from the sentencing minute order dated March 19, 2014.

³ Because we order the association condition stricken, we need not address defendant's alternative argument that the condition was unconstitutionally vague.

RUSHING, P. J.

WE CONCUR:

ELIA, J.

WALSH, J.*

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* Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

