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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RYAN LEO MANGANTE,

Defendant and Appellant.

A106221

(Contra Costa County
Super. Ct. No. 50323220)

I.

INTRODUCTION

Appellant Ryan Leo Mangante pleaded no contest to a charge of possessing marijuana for sale and was placed on probation for two years. He appeals the trial court's denial of his motion to suppress evidence. We reverse.

II.

PROCEDURAL AND FACTUAL BACKGROUND

On November 25, 2003, the Contra Costa County District Attorney filed an information charging appellant with one count of possessing marijuana for sale, in violation of Health and Safety Code section 11359. On March 4, 2004, defense counsel filed a motion to suppress evidence pursuant to Penal Code section 1538.5. The prosecution filed an opposition on March 23, 2004. On March 25, 2004, the trial court held a hearing on the motion.

At the suppression hearing, Antioch Police Officer Diane Jones testified that she had been a sworn officer with the police department for over five years as of August 28, 2003. Sometime around 6:00 p.m., she was working patrol and heard “loud stereo music” coming from a vehicle not yet within her view, near the intersection of Texas Street and G Street. Officer Jones waited in her patrol car at this intersection and saw a brown Chevy Impala playing the loud music, and driving toward her on G Street from about 50 feet away. When the occupants of the vehicle saw her patrol car, they quickly turned their music down. Officer Jones made a traffic stop at G Street and 18th, at approximately 6:20 p.m. The vehicle immediately pulled over in a residential area, about 100 yards away from where she first spotted it. Officer Jones walked over and informed the driver, appellant Ryan Mangante, of the reason for the stop. She asked for his driver’s license, insurance, and registration papers, which he immediately handed over. Officer Jones then asked if appellant was on probation, to which he responded that he thought he was, but he was not sure if the probation was still active. Upon inquiry, he told her that the probation was for possession of a deadly weapon, specifically brass knuckles.

Before she returned to the patrol car, Officer Jones also asked for identification from the two passengers in the vehicle, appellant’s brother Matthew Mangante and their friend Steven Z. Matthew gave his license to Officer Jones; Steven was only 12 years old and did not have identification papers. Officer Jones went back to her patrol car to run appellant’s license and the passengers’ names for warrants. Within a few minutes, the police dispatch informed her that appellant had a valid license and was clear of any warrants. Dispatch also confirmed that appellant was on court probation, but was unable to find the terms. As a result, Officer Jones did not know if appellant had a search clause.

Officer Jones then returned to appellant’s car and asked him to step out and over to the sidewalk. By this time, a cover unit, which had been automatically dispatched once Jones made the traffic stop, had arrived. Officer Jones asked appellant if she could search him for weapons. Appellant said “yes” and put his hands up in the air. She searched appellant but did not find any weapons. Officer Jones then asked the front

passenger, Matthew, if she could also search him for weapons. He asked if she also wanted to search his pockets, to which she replied “yes” and that she wanted to search him for her own safety. He gave her permission, but cautioned her to be careful, as he had recently undergone back surgery. Officer Jones searched Matthew but did not find any weapons. Finally, she asked the rear passenger, Steven, if she could also search him for weapons, and he responded by putting his hands up in the air. She inferred that he was thereby giving her consent, and conducted a search which uncovered no weapons.

Satisfied that none of the passengers had any weapons, Officer Jones then asked appellant if she could search his car for weapons, to which he replied “go ahead.” She found what appeared to be a handgun under the driver’s seat and stopped the vehicle search to arrest appellant. At this point, about 10-15 minutes had elapsed since Officer Jones initiated the traffic stop. The gun was later determined to be a CO2 gun with an orange paint strip on the gun barrel that had been painted over black so that it appeared to be a real semi-automatic pistol. She could not recall if she advised appellant of any rights during this arrest. After handcuffing him, Officer Jones resumed the vehicle search and found some plastic containers holding what she suspected was marijuana, also under the driver’s seat. By the time she headed back to the police station, with appellant in custody, Officer Jones estimated that about 25-30 minutes had passed since she made the traffic stop.

On cross-examination, Officer Jones testified that both appellant and his passengers were cooperative when she pulled them over. She also testified that Officer Samson, her cover officer, was present when she approached appellant’s vehicle for the second time, and that both she and Officer Samson were armed. Defense counsel showed her an arrest form filled out by the jailer and a report of the incident written by Officer Jones herself, both of which indicated that the time of arrest was 18:56. Since the traffic stop was recorded at 18:20, this meant that 36 minutes elapsed from the time of the stop to the time of the arrest.

On redirect examination, Officer Jones clarified that the 18:56 recorded time was actually the time she left the scene and not the time she placed appellant in handcuffs,

which took place within 10 to 15 minutes of the traffic stop. She testified that, between the arrest and the time she left the scene, she was collecting evidence and interviewing the passengers and appellant.

The defense then called Matthew as its first witness. He testified he was appellant's brother, and that he and their 12-year-old friend Steven had been riding in appellant's car on the evening of August 28, 2003, when they were pulled over by Officer Jones for playing music too loudly. She took the licenses of appellant and Matthew and returned to her car to process their information. About 15 minutes later, Officer Jones came back to appellant's car and asked if anyone was on probation. Appellant replied that he thought he was, and she returned to her patrol car for another 10 minutes. Matthew testified that Officer Jones went back to her patrol car twice during this whole incident, but he could not remember clearly the sequence of events. When she returned, Officer Jones asked appellant if she could search him. He got out of the car and said "yeah." On cross-examination, Matthew admitted that he was not paying attention to what Officer Jones was saying to his brother after she asked him to step out of the car. Matthew watched as she patted his brother down, checked his socks, and went into his pockets, but found no weapons. Officer Jones then asked Matthew if she could search him for weapons, to which he said "sure." After the search, Matthew stood by a fence and talked with Officer Samson, who asked him about his back. Officer Jones next searched Steven without first asking his permission, though Matthew admitted that he wasn't listening to their exchange. He also testified that he never heard Officer Jones ask appellant for permission to search his vehicle.

Matthew estimated that about 25 minutes had passed from the time of the traffic stop to when Officer Jones asked if she could search them. He testified that when she asked to search him, he did not feel like he had the right to say no and that he might as well let her search him since he had no weapons. He also estimated that about 10 minutes passed from the time Officer Jones began searching appellant's car to the time she arrested him. On cross-examination, however, Matthew said that only about 25

minutes had passed from the time of the traffic stop before Officer Jones arrested his brother. About 10 minutes later she told Matthew to take his brother's car home.

Appellant was called as the final witness. He testified that during daytime of August 28, 2003, he was driving with his music playing loudly when he saw Officer Jones's car and turned his music down. She pulled him over for playing loud music, asked for his driver's license, insurance, and registration, and asked his passengers for their identification. Officer Jones took their papers and returned to her patrol car for about 15-20 minutes. When she came back to appellant, she did not have a ticket with her, but asked him and his passengers if any of them were on probation. Appellant replied that he had been on probation, but was not sure of his current status.

Officer Jones then went to her vehicle and came back to appellant about 5 to 10 minutes later to ask him if she could search him. He asked, "Me or my vehicle?" to which she replied, "Just you." She told him that she wanted to pat him down to see if he had any weapons. Appellant said "I don't got nothing on me. Go ahead." He then stepped out of his car, and Officer Jones patted him down and searched his pockets.

After finding nothing and telling appellant to sit on the curb, she "pulled" appellant's brother out of the passenger seat and patted him down as well. Then she told Steven to get out of the car and put his hands up. He quickly complied, since he appeared to appellant to be "scared." "Next thing she was in the front seat of my vehicle going through my car," appellant testified. He also testified that Officer Jones never asked him for permission to search his car. Appellant believed there was another officer present during this time, but was not really paying attention to him. He estimated that "at least" 30 minutes had passed from the time Officer Jones stopped his car to the point she began searching his car.

The trial court denied the motion to suppress evidence. The judge found that Officer Jones made a legitimate traffic stop, that during this stop she inquired as to appellant's probation status, and that such a question is permissible during a traffic stop as long as the time taken to ask the question and get the answer does not unduly prolong the detention. "The answers to the questions, of course, can provide grounds to delay and

investigate further.” Although the terms could not be confirmed, because appellant responded that he might be on probation, which was confirmed, and because it was probation for possession of a deadly weapon, Officer Jones had “reasonable cause to investigate further as to this defendant’s connection with any other weapons at this occasion.” The judge reasoned that, even though the terms of the probation were not confirmed, “it’s [an] implied, if not an express provision in every condition of probation, that no other laws be violated.” Therefore, this gave the officer a “reasonable opportunity to pat search the defendant” for weapons. Upon finding what appeared to be a weapon in appellant’s car, Officer Jones had the right to detain him further, arrest him, and continue her search. Thus, the initial detention and investigatory procedures were “well within a traffic stop timeframe,” and the answers Officer Jones received regarding probation status “gave [her] cause to extend [the detention] a little further.” The court ruled that appellant’s constitutional right to a reasonable detention was not violated, and denied his motion to suppress.

Subsequently, appellant pleaded no contest to the charge on March 30, 2004. He was sentenced to two years probation and 60 days in the county jail, given credit for seven pretrial days served in county jail, and assessed a \$200 restitution fine, a \$20 security fee, a \$135 laboratory analysis fee, a \$150 drug program fee, and a \$350 attorney fee. On April 2, 2004, appellant filed a timely notice of appeal for the denial of the motion to suppress evidence.

III.

DISCUSSION

A. Standard of Review

“The standard of appellate review of a trial court’s ruling on a motion to suppress is well established. We defer to the trial court’s factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. . . .” (*People v. Glaser* (1995) 11 Cal.4th 354, 362, citing *People v. Leyba* (1981) 29 Cal.3d 591, 596-597, and *People v. Lawler* (1973) 9 Cal.3d 156, 160.)

“Where . . . the facts are basically undisputed, we independently review the decision, applying federal law, as well as state law where it does not conflict with federal law to evaluate the issues involved. [Citation.]” (*People v. Downing* (1995) 33 Cal.App.4th 1641, 1650, fn. omitted.)

B. Officer Lacked Reasonable Cause to Expand Scope of Appellant’s Detention

“The Fourth Amendment guarantees ‘[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.’

Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of ‘persons’ within the meaning of this provision. [Citations.]” (*Whren v. United States* (1996) 517 U.S. 806, 809-810.) For Fourth Amendment purposes, an ordinary traffic stop is treated analytically as an investigatory detention, also known as a *Terry* stop. (*United States v. Sharpe* (1985) 470 U.S. 675, 682; *Berkemer v. McCarty* (1984) 468 U.S. 420, 439; see also *Terry v. Ohio* (1968) 392 U.S. 1 (*Terry*)). Such a traffic stop is justified if the facts and circumstances known to the officer support at least a reasonable suspicion that the driver has violated some law. (*People v. Miranda* (1993) 17 Cal.App.4th 917, 926.)

In this case, appellant’s opening brief admits that Officer Jones pulled him over for the traffic offense of driving with his music playing too loudly, a violation of Vehicle Code section 27007. Thus, Officer Jones had reasonable suspicion to detain appellant for a traffic stop.

A traffic stop must be temporary and last no longer than necessary to effectuate the purpose of the stop. (*Florida v. Royer* (1983) 460 U.S. 491, 500.) Appellant presents several arguments as to why this traffic detention violated his Fourth Amendment rights. Firstly, he asserts that the traffic stop was unduly prolonged because there was no independent reasonable suspicion justifying the expanded scope of his detention beyond its original purpose. He argues Officer Jones was permitted to ask him and his passengers for identification, but that after they provided this information, she unnecessarily prolonged the detention by asking questions about probation status and following that inquiry up with a search.

After initiating a traffic stop, “the officer may temporarily detain the offender at the scene for the period of time necessary to discharge the duties that he incurs by virtue of the traffic stop.” (*People v. McGaughran* (1979) 25 Cal.3d 577, 584.) While the officer investigates the traffic violation, he or she is permitted to ask the offender generalized questions and questions about probation status. (*People v. Brown* (1998) 62 Cal.App.4th 493, 499.) Answers regarding probation status “merely provide[] the officer with additional pertinent information about the individual he ha[s] detained.” (*Ibid.*) Thus, the trial judge was correct in noting that Officer Jones’s inquiry into probation status was permissible, and that the answer to the inquiry could provide grounds for further delay and investigation.

When appellant told Officer Jones that he had been on probation for possession of a deadly weapon, she asked him to step out of the vehicle for a pat search for weapons. Ordering a driver, who has been lawfully detained for a traffic violation, out of the vehicle is a de minimis intrusion. (*Pennsylvania v. Mims* (1977) 434 U.S. 106, 111.) Once the driver is out of the vehicle, the police officer may conduct a pat search, the purpose of which is “not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence.” (*Adams v. Williams* (1972) 407 U.S. 143, 146.) *Terry* sets out the two conditions that must be met before a pat search is permitted: 1) the underlying detention must be valid, and 2) the officer must have “reason to believe that he is dealing with an armed and dangerous individual [T]he issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. [Citations.]” (*Terry, supra*, 392 U.S. at pp. 21, 27.)

In this case, Officer Jones met both conditions. First, she properly detained appellant for his traffic violation. Second, her sense of safety was threatened once it was revealed that appellant might still be on probation for possession of a deadly weapon, a fact confirmed by dispatch. The United States Supreme Court has established the right of police officers “to neutralize the threat of physical harm” through a weapons search of the suspect when they possess an articulable suspicion that an individual is armed and

dangerous. (*Terry, supra*, 392 U.S. at p. 24.) Our Supreme Court has determined the key question to be whether the confrontation is of the kind where the officer could reasonably believe in the possibility that a weapon may be used against her. (*People v. Superior Court* (1972) 7 Cal.3d 186, 204.) In answering yes, the officer must be able to point to specific facts and circumstances that give her reasonable grounds to believe that the offender has a weapon on his person. (*Id.* at p. 206.) The fact that appellant had been and might still be on probation for possession of a deadly weapon gave Officer Jones reason to believe that he might have a weapon on his person on this particular occasion. Thus, she was justified in patting down appellant for weapons.

However, after failing to find any weapons on appellant, Officer Jones asked his two passengers to step out of the car in order to pat them down for weapons. Once the searches of the passengers produced nothing, Officer Jones asked appellant for consent to search the vehicle for weapons. The Supreme Court extended the holding of *Terry* to allow officers to conduct a search of the passenger compartment of an automobile during the course of an investigative detention if they have reasonable suspicion that the driver may be within reach of a weapon. (*Michigan v. Long* (1983) 463 U.S. 1032, 1049.) In this same holding, however, the court stressed that this did not mean that “the police may conduct automobile searches *whenever* they conduct an investigative stop.” (*Id.* at p. 1049, fn. 14, italics in original.)

In *Long*, two officers watched the defendant drive his car erratically into a ditch, shortly after midnight in a rural area. Stopping to investigate, they found the defendant at the rear of the car and seemingly intoxicated, and they asked him for his license and registration. When the defendant finally responded, he began walking toward the open door of his vehicle. As the officers followed him, they spotted a large hunting knife on the floorboard of the car. The officers then stopped the defendant, arrested him, and conducted a search of him and his car. (*Michigan v. Long, supra*, 463 U.S. at pp. 1035-1036.) The late hour, rural location, erratic driving of the defendant, his apparent intoxication, and the visible hunting knife on the floorboard of his car, led the Supreme

Court to uphold the protective search of the car's passenger compartment as reasonable under *Terry*. (*Id.* at pp. 1050-1051.)

In contrast here, the only reason Officer Jones might have suspected that appellant could have been in reach of a weapon was his admission, confirmed by dispatch, that he had been on probation for a deadly weapon. On the other hand, the dispatcher could not confirm if appellant was still on probation or if he was subject to a search condition, pat-down searches of appellant and his passengers had produced nothing, appellant and his passengers behaved cooperatively throughout the entire stop, they exhibited no signs of suspicious behavior, and Officer Jones never testified that she saw any weapons in the car in plain view. In addition, the traffic violation for which she had stopped appellant was playing music too loudly, something wholly unrelated to weapons or drugs possession. Furthermore, the traffic stop took place on an early summer evening in a residential area and not in a deserted location at late hours of the night. Finally, any suspicion that appellant's two passengers could have been in reach of a weapon was diminished by the fact that neither passenger was on probation, Matthew had recently undergone back surgery, Steve was only 12 years old and visibly frightened, and Officer Jones's cover officer was standing by the boys. We agree with appellant's argument that the further search of the car unduly prolonged the detention because the facts provide no basis for reasonable suspicion to do so.

Moreover, Officer Jones cannot justify the search of appellant's car based on the fact that he was on probation for possession of a deadly weapon when she did not know if he was subject to a search condition.¹ When an officer searches a suspect he or she believes is a probationer under a search condition, and the search is unlawful because the suspect's probation and search condition turn out to be invalid, the fruits of that search will not be suppressed if the officer relied in objectively reasonable good faith on information supplied by non-law enforcement personnel. (*People v. Downing, supra*, 33

¹ The issue of whether appellant was actually subject to a search condition at the time of the search was never resolved at trial.

Cal.App.4th at pp. 1651-1654.) This is known as the good faith exception to the exclusionary rule. (*Id.* at pp. 1651-1652.)

However, a search of a person subject to a search condition by an officer unaware of that condition violates that person's Fourth Amendment rights only if the search is otherwise unlawful. (*People v. Bowers* (2004) 117 Cal.App.4th 1261, 1271.) Such a search can be lawful if the officer had a warrant or if the search was based on reasonable suspicion that the person was engaging in criminal activity. (*United States v. Knights* (2001) 534 U.S. 112, 121.) Not only was Officer Jones unaware whether a search condition existed, but she was also unable to establish that the search was lawful. Here, Officer Jones conducted a warrantless search of appellant's car without any basis for reasonable suspicion that he was involved in any criminal activity.

Respondent nevertheless argues that the search was lawful because appellant explicitly consented to a search of his car, and thus agreed to any further extension of his detention. When a detention goes beyond the limited restraint of a *Terry* stop, a suspect's consent to a search is invalidated by the illegality of the extended stop. (*Florida v. Royer, supra*, 460 U.S. at p. 501.) In *Royer*, after observing a man exhibiting behavior characteristic of a drug courier in an airport, police temporarily detained him and his luggage to confirm or dispel their suspicions. The police exceeded the limits of an investigative stop when they asked this defendant to accompany them to a small police room, retained his airline ticket and driver's license, indicated in no way that he was free depart, and then asked for consent to search his luggage. The Supreme Court concluded that because the defendant was being illegally detained when he consented to the search of his luggage, his consent was tainted by the illegality and was ineffective to justify the search. (*Id.* at pp. 507-508.)

In this case, Officer Jones illegally extended the scope of the traffic stop by requesting consent to search appellant's car when there was no basis for independent suspicion that appellant may have been in reach of a deadly weapon. Thus, the consent she received from appellant cannot justify the search. "The exclusionary rule prevents introduction of evidence obtained as the indirect product of an unconstitutional search or

seizure, often referred to as ‘fruit of the poisonous tree.’ [Citation.]” (*People v. Wilkins* (1986) 186 Cal.App.3d 804, 811.) Since the marijuana was seized as a result of an illegal search of appellant’s car, it should have been suppressed under the exclusionary rule.

The trial judge found that, because appellant had been on probation for possession of a deadly weapon and this probation had been confirmed, though not the terms, Officer Jones had “reasonable cause to investigate further as to [appellant’s] connection with any other weapons at this occasion.” All searches were found to be reasonable under the circumstances because “it’s [an] implied[,] if not an express provision in every condition of probation[,] that no other laws be violated.” The meaning behind these conclusions is unclear. If the judge meant that appellant was engaged in some kind of illegal activity, other than the traffic violation, such reasoning would be in error, as the circumstances surrounding appellant’s traffic detention revealed no signs of criminal activity. If the judge was referring to the traffic violation itself, the trial court’s logic would mean that police are always permitted to search the probationer, his passengers, and his car whenever the probationer commits a traffic violation.

Regardless of the basis for the trial court’s conclusions, we cannot agree that appellant’s right to reasonable detention was not violated when the officer searched appellant’s car.

IV.
DISPOSITION

The judgment is reversed.

Ruvolo, J.

We concur:

Haerle, Acting P.J.

Lambden, J.