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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. DEVANCE SAUNDERS, Defendant and Appellant.	H025674 (Santa Clara County Super. Ct. No. CC246493)

Defendant Devance Saunders appeals after pleading guilty to possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1)),[1] carrying a concealed firearm by a felon (§ 12025, subd. (a)(2)); carrying a loaded firearm in a vehicle by a felon (§ 12031, subd. (a)(1)); and possession of ammunition by a felon (§ 12316, subd. (b)). Defendant admitted a prior strike conviction (§§ 667, subds. (b)-(i); 1170.12). The trial court struck the prior and placed defendant on probation for three years with the condition, inter alia, that he serve six months in county jail.

On appeal, defendant contends the trial court erred by denying his motion to suppress evidence. We find no error and affirm the judgment.

[1] Unspecified section references are to the Penal Code.

I. BACKGROUND

On March 31, 2002, San Jose Police Officers Mark Womack, Brian Simuro, and Javier Acosto were on an assignment to patrol a gathering of motorcycle clubs near Club Rodeo on Coleman Avenue in San Jose. The gathering, an annual ritual called a "blessing," included members of the Hell's Angels, the Mongols, and several sub-clubs,[2] including the Soul Brothers, who were associated with the Hell's Angels. The officers had knowledge of the clubs' involvement in violence and weapons possessions on previous occasions, including an incident where members of the Hell's Angels were arrested for possession of weapons and ammunition at the previous year's blessing. Additionally, earlier that day, Officer Womack had been in on a traffic stop where members of the Hell's Angels had body armor and guns in their possession.

At approximately 10:30 a.m., the officers saw a Chevy pick-up truck following directly behind 15 to 20 Soul Brothers members riding their motorcycles along Coleman Avenue. The officers were aware from their training that often the vehicle preceding or following a group of motorcycles is the "load" or "tail" car; this vehicle "usually contains . . . other members or associates, . . . wives, girlfriends of the members," "weapons, drugs, [and] other items." After Officer Womack noted that the truck had expired registration tags and no front license plate, the officers stopped the vehicle. Both the driver, Roosevelt Ingram, and the passenger, defendant, wore clothing with indicia of membership in the Soul Brothers motorcycle club. Officers Womack and Simuro asked both men for identification and ran a records check on their driver's licenses. This took "four to five minutes."

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[2] Smaller clubs align themselves with the major outlaw motorcycle clubs in their respective geographical areas. Officer Gil-Blanco, whom the court recognized as an expert on the Soul Brothers, testified, "[h]istorically, California west coast has been predominantly overseen by the Hell's Angels being one of the major outlaw motorcycle [clubs] worldwide." The Mongols are primarily a southern California club.

After the check revealed that Ingram possessed a suspended license, police policy called for impounding the vehicle. Consequently, the officers asked both men to get out of the truck. As defendant stepped out of the truck, Officer Womack noticed that defendant wore a "large" and "bulky" jacket bearing a Soul Brothers patch. The jacket "went over his waistband, covering his waistband." Officer Womack was concerned because he was aware that people often hide guns in large jackets or in their waistbands. Defendant seemed "very nervous;" he was "very quiet," and appeared to be "shaking or trembling." Officer Womack's awareness "that these vehicles often times carry weapons or guns," coupled with the fact that he personally had participated in a stop earlier that morning where some Hell's Angels were found to have weapons and armor, led him to feel "concerned that [defendant] possibly had weapons or guns on him."

Officer Womack decided to pat search defendant, and as he stepped behind defendant to begin the pat search, he asked defendant "if he had anything illegal on him." As Officer Womack was starting to pat him down, defendant "said yes, I have a gun in my pocket." Officer Womack found a loaded gun on defendant's person where defendant said it was. A search of the truck before it was impounded produced "a plastic baggie with seven Winchester .25 caliber bullets, and a speed loader holding six .357 caliber bullets." This was found on the floorboard of the passenger side of the truck.

Defendant was charged, by information, with possession of a firearm by a felon (§ 12021, subd. (a)(1)); carrying a concealed firearm (§ 12025, subd. (a)(2)); carrying a loaded firearm in a vehicle by a felon (§ 12031, subd. (a)(1)); and possession of ammunition by a felon (§12316, subd. (b)). The information alleged a prior "strike" conviction (§§ 667, subds. (b)-(i); 1170.12). When he was arraigned on September 16, 2002, defendant pleaded not guilty and denied the prior.

On October 10, 2002, defendant brought a motion under section 1538.5 to suppress "all observations of the officer, any statements by the defendant," the loaded gun, and the ammunition. At the suppression hearing, Ingram, the driver, testified that he

had owned the truck[3] for four to five months prior to the incident. He had applied to register the vehicle and to get new license plates. The truck, however, "was missing the bumpers, [and] all the smog stuff had to be done." The DMV had issued Ingram a "temporary sticker" that would allow him to operate the vehicle until all the work was complete. This sticker, which Ingram placed in the upper right corner of the back window "just above the license plate," bore the No."3." The number corresponded to the month of March, and allowed him to operate the vehicle through March 31, 2002. Although he was charged with "not having any front plate," Ingram testified that all the charges against him related to the stop were later dismissed after he brought the temporary operating permit to court.

Connie Gonzalez, a staff member of the Department of Motor Vehicles, testified that a temporary operating permit is "issued to a vehicle for the owner to" "legally use [the vehicle] on public roads, streets, [and] parked."[4] The permit, which is always red, displays a large bold face number in white indicating that the vehicle may be lawfully operated until the last day of the corresponding month. Handwritten information on the permit specifies, among other things, "the make of the vehicle, the VIN number, . . .and the [registration] amount that was purchased." This allows an officer to stop the vehicle, look at the information on the permit and on the vehicle itself, "and make sure they match." Nothing is documented in the computer.

Defendant claimed that the officers acted unreasonably when they failed to examine the permit after stopping the truck for expired registration tags and the missing front license plate. The driver had obtained a temporary operating permit bearing a large No. "3." Defendant argued that the "only reasonable inference from making [the] number so large . . . is to indicate to law enforcement personnel out on the field that this

[3] The truck was registered in Ingram's wife's name.
[4] Vehical Code sections, 4156, 4606, 5200, 5202, 5205.

car may be operated lawfully." Defendant asserted that this was a case of prolonged detention where the officers did not inspect the permit after pulling [the truck] over; rather they did "everything else but deal[] with the permit."

The trial court denied the motion, finding that the officers were justified in stopping the vehicle to check registration and could ask for identification in the course of the stop. The court emphasized the concern for officer safety. "[O]fficer safety is a higher concern on this particular time and place. The intrusion . . . to the defendant based on the clothing he wore was minimal at best, and only when the officer took the brief pat searching did the defendant finally admit he had the unlawful items that the officer testified to. . . . I think all the conduct was justified."

On November 13, 2002, defendant changed his plea to guilty on all counts and admitted the prior strike conviction. At sentencing, the trial court struck defendant's prior strike conviction and placed defendant on three years probation provided, inter alia, that he serve six months in county jail.

II. ISSUES

Defendant contends that the evidence should have been suppressed because it was obtained as a result of an illegal stop, detention and pat-search.

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." ' [Citation.]" (*People v. Ayala* (2000) 23 Cal.4th 225, 255.)

The Initial Vehicle Stop

Defendant argues that the initial vehicle stop was illegal because the officers did not have reasonable suspicion that the truck was in violation of the Vehicle Code. Although the truck had no front license plate and expired registration tags, it did have a temporary permit affixed to the rear window. (See Veh. Code, § 4156.) Because the permit was in plain sight, with the No. 3 prominently displayed, the officers could see that the vehicle was registered through March. This should have dispelled any *reasonable* suspicion the officers might otherwise have entertained concerning the operation of the vehicle.

The People argue that the defendant does not have standing to challenge the initial vehicle stop because he was only a passenger in the vehicle. His privacy rights were not implicated in the vehicle stop because he was not detained. The People rely on *People v. Fisher* (1995) 38 Cal.App.4th, 338, in which this court held that a passenger is not detained when officers stop a vehicle. "[I]n constitutional terms a passenger is not 'lawfully stopped' [citation], seized, or detained [citation] merely because the vehicle in which he or she is riding is stopped for a traffic violation." (*Id.* At p. 344.)

Defendant asks that we reconsider *Fisher* in light of subsequent authority, namely *People v. Bell* (1996) 43 Cal.App.4th 754, where the Fourth District Court of Appeal held that a car stop constitutes a detention of any passengers in the car. We acknowledge a split of authority on this issue. A different division of the Fourth District Court of Appeal recently analyzed both *Fisher* and *Bell* under the standard expressed by the United States Supreme Court in *Maryland v. Wilson* (1997) 519 U.S. 408, and agreed with *Fisher,* concluding that "[p]assengers are not seized within the meaning of the Fourth Amendment simply because they occupy a seat in a vehicle which a police officer stops

for a violation of the Vehicle Code." (*People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1369; see also *People v. Gonzalez* (1992) 7 Cal.App.4th 381; *People v. Castellon* (1999) 76 Cal.App.4th 1369, 1374.) We will follow *Fisher* and *Cartwright.*

Furthermore, even if defendant had standing to challenge the initial vehicle stop, it was valid. "As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." (*Whren v. United States* (1996) 517 U.S. 806, 810.) "The Fourth Amendment requires only reasonable suspicion in the context of investigative traffic stops." (*United States v. Lopez-Soto* (9th Cir. 2000) 205 F.3d 1101, 1105.)

Here the officers observed two Vehicle Code violations that warranted the stop of Ingram's truck. First, the truck was missing a front license plate in violation of Vehicle Code section 5200.[5] Second, the truck had expired registration tags in violation of Vehicle Code section 5204.[6] (See, *People v. Torralva* (1971) 17 Cal.App.3d 686, 689; *People v. Castellon, supra,* 76 Cal.App.4th at p. 1373.) The trial court's finding that the officers were unable to verify whether the vehicle had a current temporary permit without stopping to investigate was supported by the testimony of the DMV clerk. Even though there is a number displayed on the permit, this does not necessarily associate that permit with that particular vehicle. The permit "would have to be looked at" with the vehicle identification number on the car to "make sure they match." After observing that the

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[5] "When two license plates are issued by the department for a vehicle, they shall be attached to the vehicle for which they were issued, one in the front and the other in the rear. When one license plate is issued for use upon a vehicle, it shall be attached to the rear thereof." (Former Veh. Code, § 5200, amended by Stats. 2003, c. 594, § 27.)

[6] "(a) Except as provided by subdivisions (b) and (c), a tab shall indicate the year of expiration and a tab shall indicate the month of expiration. Current month and year tabs shall be attached to the rear license plate assigned to the vehicle for the last preceding registration year in which license plates were issued, and, when so attached, the license plate with the tabs shall, for the purposes of this code, be deemed to be the license plate . . . [v]ehicles that fail to display current month and year tabs or display expired tabs are in violation of this section." (Veh. Code, § 5204, subd. (a).)

truck had no front license plate and expired registration tags, the presence of the temporary permit alone did not dispel the officers' reasonable suspicion that a traffic violation had occurred. Thus, the officers had the right to stop the vehicle.

The Traffic Stop Was not Unlawfully Prolonged

Defendant argues that even if the traffic stop was valid initially, it was unlawfully prolonged when the officers did not simply verify the temporary permit but instead asked for identification and ran records checks. We disagree. A request for a passenger's identification during a routine traffic stop does not transform the encounter into a Fourth Amendment seizure. (*People v. Cartwright, supra,* 72 Cal.App.4th at p. 1370 *People v. Lopez* (1989) 212 Cal.App.3d 289, 291.) And if a records check can be completed in approximately the same amount of time that the officer would take to discharge his or her duties by virtue of the traffic stop, it is not improper. (*People v. McGaughran* (1979) 25 Cal.3d 577, 584.) Here, considering the lack of a registration tag and front license plate, the police could reasonably run a check to determine the validity of the car registration and the driver's license. Furthermore, Officer Womack testified that he did not demand defendant's driver's license; rather, he "just asked [defendant] if he had any I.D. with him." In response, defendant produced a California driver's license. The records check on defendant's license and Ingram's license took only "four to five minutes." This was not an unreasonable delay.

The Pat Search Was Justified

Once the license check revealed that Ingram's license was suspended, police procedure required that the car be impounded. Consequently, Officer Womack asked defendant to step out of the car. Defendant did not object. Defendant first argues that removing him from the car was unlawful because it was based on the fact that Ingram's license was suspended, when his license was actually *not* suspended. Defendant relies on Ingram's testimony that he had a valid license. However, Officer Womack testified that the check showed that the license was suspended. The court was entitled to believe

Womack's testimony and find that the license was suspended at the time of the stop in March of 2002.

Next, the decision to impound the truck because of the suspended license required the removal of the individuals in the truck, since the truck would be towed away. Officer Womack's request that defendant get out of the truck, and his compliance, did not constitute a Fourth Amendment seizure. "[A] mere request to exit a vehicle, as opposed to a command, is insufficient in and of itself to transform the contact into a detention. As the high court has explained, a Fourth Amendment seizure does not occur unless the contact 'loses its consensual nature.' " (*People v. Cartwright, supra,* 72 Cal.App.4th at p. 1370, fn 10; *Florida v. Bostick* (1991) 501 U.S. 429, 434.) Asking defendant to step out of the car under the circumstances here was a "minimal" intrusion not amounting to a seizure. (*Maryland v. Wilson, supra,* 519 U.S. at p. 419.)

Defendant argues that because he was simply a passenger in a car stopped for a minor vehicle code violation, and he did nothing to indicate he posed any danger, the police had no reasonable basis for pat-searching him. We disagree. A limited search for weapons is permissible if the officer is "able to point to specific and articulable facts" indicating that the person is armed and dangerous. (*Terry v. Ohio* (1968) 392 U.S. 1, 21, 30; *People v. Medina* (2003) 110 Cal.App.4th 171, 176.)

Here Officer Womack had been assigned as part of a team to patrol the biker blessing to prevent any outbreak of violence. He was aware that during the previous year's blessing police had recovered weapons in the possession of the Hell's Angels. He was aware through his training that the Soul Brothers were associated with the Hell's Angels. He was aware that there had been recent violence in Southern California involving the Hell's Angels and another club. He was also aware from his training that cars immediately preceding or following a procession of members of a motorcycle club often carried weapons. And he had personally been in on a vehicle stop earlier that day where body armor and weapons were recovered. Womack testified that defendant wore

several items that identified him as a member of the Soul Brothers. When defendant stepped out of the truck, he was "shaking or trembling" and "seemed very nervous." Because of defendant's nervous behavior, and his "large, bulky" jacket, and because of the other circumstances involving the motorcycle clubs that Officer Womack was aware of, he was concerned that defendant might be hiding a weapon. Under all of these circumstances, a cursory search of defendant for weapons was reasonable under the Fourth Amendment. (See, e.g., *United States v. Flett* (8th Cir. 1986) 806 F.2d 823, 828; *United States v. Arvizu* (2002) 534 U.S. 266, 274.)

There was no Violation of Harvey-Madden-Remers[7]

Defendant argues that the court erred in considering expert testimony to determine the validity of the search because the record does not show that defendant was aware of the information given by the expert and because it was otherwise inadmissible under the *Harvey-Madden-Remers* rule. The testimony referred to was given by Officer Jorge Gil-Blanco, an expert on outlaw motorcycle gangs and the Soul Brothers in particular. The court allowed the evidence, over repeated objections by the defense under *Harvey-Madden-Remers*. Gil-Blanco testified that the blessing was an annual event that had been going on since at least 1990. Members of outlaw motorcycle gangs, including the Hell's Angels and other "subclubs," participated in it. It involved the motorcycle riders riding in procession and being anointed with holy water by a priest. Gil-Blanco testified that tensions between the Hell's Angels and a motorcycle gang from southern California known as the Mongols had been escalating. At the previous year's blessing, two members of the Hell's Angels had been found to possess various weapons. There was an expectation that there would be a confrontation between the Hell's Angels and the Mongols at the San Jose event and it was in part for this reason that the event was heavily

[7] *People v. Harvey* (1958) 156 Cal.App.2d 516, 523-524; *Remers v. Superior Court* (1970) 2 Cal.3d 659, 666-667; *People v. Madden* (1970) 2 Cal.3d 1017, 1021.

patrolled. Gil-Blanco testified that the Soul Brothers aligned themselves with the Hell's Angels. He testified further that a "crash" car or "tail" car often traveled with the motorcyclists, and carried spare parts, weapons, the wives or girlfriends of the motorcyclists, and food. Gil-Blanco testified that he had given trainings on motorcycle gangs to San Jose police officers but he did not know whether the officers patrolling this particular event had been to his training.

First, defendant's contention that the record does not establish that Womack personally was aware of any of this information is belied by Womack's own testimony. He stated that he did receive training about the motorcycle clubs and about this particular event. He knew that the Soul Brothers were associated with the Hell's Angels. He was aware of the tension between the Hell's Angels and the Mongols, and of the recent violence. He was also aware that Hell's Angels had been found to have weapons at the previous year's blessing. And he had learned in his training that "tail" cars often carried weapons or drugs.

Secondly, defendant's argument that the rules of *Harvey-Madden-Remers* were violated here is also unfounded. The court in *People v. Madden* (1970) 2 Cal.3d 1017 summarized the rationale and general scope of these rules as follows: "[A]lthough an officer may make an arrest based on information received through 'official channels,' the prosecution is required to show that the officer who originally furnished the information had probable cause to believe that the suspect committed a felony. We reaffirmed this principle in the recent case of *Remers v. Superior* Court[*, supra,* at] pp. 659, 666-667, where we pointed out: 'It is well settled that while it may be perfectly reasonable for officers in the field to make arrests on the basis of information furnished to them by other officers, "when it comes to justifying the total police activity in a court, the People must prove that the source of the information is something other than the imagination of an officer who does not become a witness." [Citations.] To hold otherwise would permit the manufacture of reasonable grounds for arrest within a police department by one officer

transmitting information purportedly known by him to another officer who did not know such information, without establishing under oath how the information had in fact been obtained by the former officer. [Citations.] "If this were so, every utterance of a police officer would instantly and automatically acquire the dignity of official information; 'reasonable cause' or 'reasonable grounds,' . . . could be conveniently fashioned out of a two-step communication; and all Fourth Amendment safeguards would dissolve as a consequence." [Citation.]' " (*Id.* at p. 1021.) "The whole point of the *Remers* rule is to negate the possibility that the facts which validate the conduct of the officers in the field are made up inside of the police department by somebody who is trying to frame a person whom he wants investigated." (*People v. Orozco* (1981) 114 Cal.App.3d 435, 444.)

These rules generally come into play where the authority to arrest comes from information obtained through a dispatcher or an anonymous tip. (See, *People v. Orozco, supra,* 114 Cal.App.3d 435; *People v. Johnson* (1987) 189 Cal.App.3d 1315, 1320; *People v. Armstrong* (1991) 232 Cal.App.3d 228, 283.) Where this information is not verified or corroborated, or where the police do not have independent evidence for the arrest, the *Harvey-Madden-Remers* rules provide a basis for a suppression motion on grounds that the information was inherently unreliable. We are unaware of any cases applying these rules to test the reliability of expert testimony. We do not believe they apply in this case, for several reasons.

First, there is no danger here that the information the arresting officer possessed about motorcycle clubs was the product of "the imagination of an officer who does not become a witness." (*People v. Madden, supra,* 2 Cal.3d at p. 1021.) "The best way of negating 'do it yourself probable cause' is to have the officer who received the information from outside the police department testify." (*People v. Orozco, supra,* 114 Cal.App.3d at p. 444.) Here Officer Gil-Blanco testified as to his experience and qualifications and the court found that he was an expert on motorcycle clubs and on the Soul Brothers. Furthermore, Officer Womack testified as to what he had personally

learned about motorcycle club activities in his training as a police officer. The court offered to give defense a continuance so that they could put on their own expert to refute the information testified to by Officer Gil-Blanco, but they did not do so.

Furthermore, there is no danger that the facts leading to the arrest of defendant were "made up inside of the police department by somebody who is trying to frame a person whom he wants investigated." (*People v. Orozco, supra,* 114 Cal.App.3d at p. 444.) None of the information testified to by Gil-Blanco was directed towards defendant. And defendant's arrest was not *solely* the result of information regarding the motorcycle clubs. In addition to his training regarding the event, Officer Womack was personally aware, from participating in another vehicle stop earlier in the day, that other motorcycle club members participating in the event were carrying weapons.

Finally, there was an independent reason for stopping the truck: it was lawfully stopped for a Vehicle Code violation. The driver had a suspended license, necessitating the impounding of the car. And independent circumstances justified the pat search of defendant once he was out of the vehicle, including his nervous behavior, his bulky jacket, and the prevailing atmosphere of tension between the gangs participating in the blessing event. Thus this is not a case where "the detaining officer himself does not have personal knowledge of facts justifying the detention, but acts solely on the basis of information or direction given him through police channels." (*People v. Collin* (1973) 35 Cal.App.3d 416, 420.) We find no violation of the *Harvey-Madden-Remers* rules in the circumstances here.

There was No Miranda Violation

Defendant argues that even if the police acted lawfully in asking him to get out of the vehicle, Officer Womack unlawfully conducted a custodial interrogation by failing to give him his *Miranda*[8] warnings before asking "if he had anything illegal on him." We

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[8] *Miranda v. Arizona* (1966) 384 U.S. 436.

have found that Officer Womack had "specific and articulable facts" justifying a brief detention to pat-search defendant. (*Terry v. Ohio, supra,* 392 U.S. at p. 21.) As he was conducting the pat-search he asked defendant if he had anything illegal on him. Since the officer's question was asked during a lawful pat-search, rather than a custodial interrogation, the protections of *Miranda* did not come into play. (See, *Berkemer v. McCarty* (1984) 468 U.S. 420, 440; see, *People v. Williams* (1988) 44 Cal.3d 1127, 1142; *People v. Boyer* (1989) 48 Cal.3d 247, 272, disapproved on another point in *People v. Stansbury* (1989) 9 Cal.4th 824, 830, fn 1.)

The trial court properly denied defendant's motion to suppress evidence.

DISPOSITION

The judgment is affirmed.

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BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

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WUNDERLICH, J.

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MIHARA, J.