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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
APPELLATE DIVISION

THE PEOPLE, Plaintiff and Respondent, v. JERRY RUIZ VERDUGO, Defendant and Appellant.	Case No: CR.A. 4298 (Trial Court: 2481745 JV) P E R C U R I A M O P I N I O N

Appeal from judgment of conviction after court trial, San Bernardino County Superior Court, San Bernardino District, W. Charles Bradley, Commissioner. Reversed.

Jerry Ruiz Verdugo, in pro per.

No appearance for Plaintiff and Respondent.

THE COURT:

FACTS

On June 7, 2006, appellant Jerry Ruiz Verdugo was cited for failing to produce proof of financial responsibility upon demand of a police

officer (Veh. Code, § 16028, subd. (a)).[1] He pled not guilty and brought a motion to suppress evidence. (Pen. Code, § 1538.5.) In his moving papers, he asserted he had been subjected to an illegal search and seizure--a traffic stop that was not justified by reasonable suspicion that he had violated any law. Alternatively, even if the stop was justified at the outset, it became unreasonable because, even after the officer determined appellant's vehicle was registered, he continued to detain appellant to investigate whether he was insured.

The suppression motion and trial were both set for September 15, 2006. According to the court's settled statement, San Bernardino County Sheriff's Deputy W. Martin testified he was on patrol on June 7, 2006, at 9:50 a.m. in the area of 6th Street and Waterman Avenue. He noticed a beige 1986 Dodge traveling on 6th Street with an expired registration sticker on the rear license plate. Using his patrol vehicle's computer system, he ran the plate through Department of Motor Vehicle (DMV) records, which showed the registration had expired. He pulled the vehicle over and asked the driver—appellant—for his driver's license, vehicle registration, and proof of insurance.

[1] Vehicle Code section 16028, subdivision (a) provides: "(a) Upon the demand of a peace officer pursuant to subdivision (b) or upon the demand of a peace officer or traffic collision investigator pursuant to subdivision (c), every person who drives a motor vehicle upon a highway shall provide evidence of financial responsibility for the vehicle that is in effect at the time the demand is made. However, a peace officer shall not stop a vehicle for the sole purpose of determining whether the vehicle is being driven in violation of this subdivision."

Appellant produced a valid temporary registration, which had been affixed to his rear window. The deputy testified he could not see the registration document from his patrol car, because of a dark tint on the window. When appellant did not produce proof of insurance, he was cited for violating Vehicle Code section 16028, but was not cited for any other code violations.

Appellant did not testify or present evidence in his own behalf. The court denied the suppression motion, finding the traffic stop was justified. The court then found appellant guilty of violating Vehicle Code section 16028.

This appeal followed.

DISCUSSION

Appellant contends the court erred in denying the suppression motion. (*People v. Hawthorne* (1992) 4 Cal. 4th 43, 66.) "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." (*People v. Ramos* (2004) 34 Cal. 4th 494, 505.) Because warrantless searches and seizures are presumptively illegal, the prosecution bears the burden of

proving justification existed. (*People v. Williams* (1999) 20 Cal.4th 119, 136.) A defendant bringing a motion under Penal Code section 1538.5 need only plead that he was seized without a warrant. The burden then shifts to the prosecution to offer evidence proving the police action was justified. (*People v. Williams, supra,* 20 Cal.4th at. p. 136.)

Here, the initial stop was justified. An officer who has an articulable and reasonable suspicion that an automobile is not registered may detain the driver to check his or her driver's license and the vehicle's registration. (*In re Raymond C.* (2006) 145 Cal. App. 4th 1320, 1324, citing *Pennsylvania v. Mims* (1977) 434 U.S. 106, 109.) In *Raymond C*., a police officer noticed the minor's vehicle lacked a rear license plate. Although a temporary tag was affixed to the windshield, the officer could not see it from his vantage point behind the minor's car. The Court of Appeal affirmed the trial court's finding that, on these facts, the officer had reasonable suspicion to stop the vehicle to investigate whether it was registered. (*Raymond C., supra,* 145 Cal. App.4th at p. 1326; see also *Mozart v. Superior Court* (1971) 4 Cal.3d 699, 710-712 [failure to display rear plate furnishes justification to stop vehicle on suspicion the vehicle might be stolen].)

Here, Deputy Martin noticed the registration sticker on appellant's license plate had expired, which raised a reasonable suspicion that the van was not currently registered. His computer check of DMV records

supported this suspicion. The dark window tint prevented him from seeing the temporary tag was current. Therefore, even if he had noticed a temporary tag in the window, Deputy Martin would have been justified in making a brief detention stop to investigate the true status of the vehicle's registration. (*In re Tony C*. (1978) 21 Cal. 3d 888, 894; *In re Raymond C., supra*, 145 Cal.App.4th at p. 1330, fn. 3.)

However, a stop that is legal at the outset may become illegal if the investigation exceeds the scope of a reasonable detention. (*In re Raymond C., supra,* 145 Cal.App.4th at p. 1329, citing (*U.S. v. McSwain* (10th Cir. 1994) 29 F.3d 558, 561.) "[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." (*Florida. v. Royer* (1983) 460 U.S. 491, 500.) "It is the State's burden to demonstrate that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure." (*Ibid*.)

"The period of lawful detention is [for a traffic stop] limited to the time reasonably necessary for the officer to prepare the notice to appear (i.e., a citation or 'ticket'). This entails investigating the driver's license and vehicle registration, explaining the reason for the citation, and detailing the particulars of the violation on the citation. … The time it takes the officer to return to the patrol vehicle to request a timely warrant or registration check may also be included as part of the necessary period of detention."

(*Williams v. Superior Court* (1985) 168 Cal. App. 3d 349, 358, citing *People v. McGaughran* (1985) 25 Cal. 3d 577, 583-584.)

Here, Deputy Martin stopped appellant on a reasonable suspicion that his vehicle was unregistered. He was justified in detaining appellant long enough to ask for his registration and license. (*In re Raymond C., supra,* 145 Cal.App.4th at p. 1330). However, once the officer discovered the vehicle was indeed registered, and having observed no other traffic code violations, the officer's justification for detaining appellant ceased. This is so because a driver must provide proof of financial responsibility only if he is involved in an accident or is being cited for another vehicle code violation. (Veh. Code, § 16028.)

Vehicle Code section 16028 provides in pertinent part:

> "(a) Upon the demand of a peace officer *pursuant to subdivision (b)* or upon the demand of a peace officer or traffic collision investigator *pursuant to subdivision (c),* every person who drives a motor vehicle upon a highway shall provide evidence of financial responsibility for the vehicle that is in effect at the time the demand is made. However, a peace officer shall not stop a vehicle for the sole purpose of determining whether the vehicle is being driven in violation of this subdivision.
>
> "(b) *Whenever a notice to appear is issued for any alleged violation of this code*, … *the cited driver shall furnish* written evidence of financial responsibility upon request of the peace officer issuing the citation. *The peace officer shall* request and *write* the driver's evidence of financial responsibility *on the notice to appear*, … If the cited driver fails to provide evidence of financial responsibility *at the time the notice to appear is issued*, the peace officer may issue the driver a notice to appear for violation of subdivision (a). *The notice to appear for violation of subdivision (a)*

> *shall be written on the same citation form as the original violation.* [Italics added.]
> Subdivision (c) of section 16028 requires drivers to furnish a peace officer with proof of financial responsibility at the scene of an accident.

Once Deputy Martin determined that appellant was not driving an unregistered vehicle and had committed no other code violation, his detention of appellant should have ended. Instead, the deputy detained appellant further, to investigate whether he was insured, and then to cite him for being uninsured. Appellant's detention exceeded the permissible scope of the original stop. Accordingly, the court should have granted the motion to suppress.

We also note that the conviction would be subject to reversal for lack of evidence showing the elements of the crime. A driver is required to show proof of insurance only if he is being cited for another violation (Veh. Code, §16028, subd. (b)) or at the scene of an accident (*id.,* subd. (c)). The record shows neither situation occurred here and therefore appellant did not violate section 16028.

DISPOSITION

The judgment is reversed and the case remanded with directions to dismiss the complaint.

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JOHN P. WADE, Presiding Judge

of the Appellate Division

_____
MARY E. FULLER
Judge of the Appellate Division

_____
MARSHA SLOUGH
Judge of the Appellate Division