Filed 6/26/12

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,	
Plaintiff and Respondent,	E053366
v.	(Super.Ct.No. SWF10002663)
ANTHONY ALMANZA,	OPINION
Defendant and Appellant.	

APPEAL from the Superior Court of Riverside County. Kelly L. Hanson, Judge. Affirmed.

Jean Matulis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Barry Carlton and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Appellant.

* Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of part III.A.

I. INTRODUCTION

Defendant Anthony Almanza appeals from his conviction of carrying a concealed dirk or dagger (Pen. Code, former § 12020,[1] subd. (a)(4); count 1) and being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a); count 2). Defendant contends the trial court erred in denying his motion to suppress evidence under Penal Code section 1538.5, and there was no substantial evidence to establish the amount of a booking fee or his ability to pay such fee under Government Code section 29550.2.

II. FACTS AND PROCEDURAL BACKGROUND

In a patdown search on December 15, 2010, a police officer found a knife with a four-and-one-half-inch blade in defendant's pocket. Defendant appeared to be under the influence of a controlled substance, and a field test indicated he was under the influence. After his arrest, he admitted that he smoked methamphetamine the previous night.

Defendant moved to suppress the evidence obtained during the stop. The motion was heard at the preliminary hearing on February 24, 2011. After the court denied his motion to suppress evidence, defendant pleaded guilty to carrying a concealed dirk or dagger (Pen. Code, § 12020, subd. (a)(4)) and being under the influence of a controlled substance, a misdemeanor (Health & Saf. Code, § 11550, subd. (a).) Defendant also admitted a prior prison term (Pen. Code, § 667.5, subd. (b).)

---

[1] Penal Code former section 12020, subdivision (a)(4) was renumbered as Penal Code section 21310, effective January 1, 2011, operative January 1, 2012. (Stats. 2010, ch. 711 (S.B. 1080), §§ 4, 6.)

The trial court sentenced defendant to the low term of 16 months in prison for count 1 and ordered a concurrent 90-day term for count 2. The trial court struck the prison prior (Pen. Code, § 667.5, subd. (b)) and imposed various fines and fees, including a booking fee, or criminal justice administration fee, of $414.45.

Additional facts are set forth in the discussion of the issues to which they pertain.

III. DISCUSSION

A. Denial of Motion to Suppress

Defendant contends the trial court erred in denying his motion to suppress evidence under Penal Code section 1538.5.

1. Forfeiture

Defendant's motion to suppress evidence was held at the preliminary hearing before a magistrate. Defendant did not renew the motion in superior court, and the People contend he therefore forfeited review of the ruling on that motion.

If a defendant moves to suppress evidence at the preliminary hearing before a magistrate, he must renew the motion to suppress or bring a motion under Penal Code section 995 after an information is filed in superior court before he may challenge the denial of the motion on appeal. (*People v. Lilienthal* (1978) 22 Cal.3d 891, 896-897.) Courts have held that the 1998 unification of municipal and superior courts did not abrogate the requirement of a renewal of a motion to suppress after an information is filed. (E.g., *People v. Hinds* (2003) 108 Cal.App.4th 897, 900.) Article VI, section 23, subdivision (c) of the California Constitution, which created the unified court system,

specifically provides for superior court review of preliminary hearing suppression motions. (See *People v. Hoffman* (2001) 88 Cal.App.4th 1, 3.)

We agree with the People that defendant has forfeited the issue. However, despite their claim of forfeiture, the People have nonetheless addressed the merits of the issue. To forestall any future claim of ineffective assistance of counsel, we will also address the merits. (See, e.g., *People v. Scaffidi* (1992) 11 Cal.App.4th 145, 151 [Fourth Dist., Div. Two].)

2. Additional Background

At the hearing on the motion to suppress evidence, Officer Jeffrey Davis of the Hemet Police Department testified that in the evening of December 15, 2010, he had been sitting with another officer in an unmarked car in an area known for gang activity. Specifically, there had been thefts from businesses in the area, and "gang related murders, assault with deadly weapon incidents, fights." Moreover, local residents and property owners had recently requested extra patrols because suspected gang members were stopping traffic and intimidating people. Officer Davis had received training and had experience in identifying symptoms of being under the influence of controlled substances.

Officer Davis saw defendant walking down the street at about 7:00 p.m.; defendant looked anxious, paranoid, and scared. Officer Davis, wearing a black vest with police insignias, got out of his car, shined a spotlight toward defendant, and said, "Hi, how are you[?]" Defendant asked if the officer wanted to see his identification, and Officer Davis replied, "[S]ure." Officer Davis's partner also got out of the car and stood

about 10 feet away. Officer Davis asked if defendant was on parole or probation, and defendant said he was not, and that he had a parole discharge card in his wallet. Defendant's eyes appeared dilated; he was nervous and fidgety, spoke quickly, and "had dry mouth." Officer Davis believed those symptoms indicated defendant was under the influence of a controlled substance.

Defendant was wearing baggy clothes, and he put his hands in his pockets. Officer Davis asked him not to do so and defendant complied. The officer decided to do a patdown for safety. He told defendant to put his hands on his head, and defendant complied. The officer grasped defendant's hands, and defendant then said he had a knife. The officer located the knife, which had a four-and-one-half- inch blade and was 10 inches long overall, in defendant's front pants pocket.

Officer Davis arrested defendant. Field sobriety tests indicated he was under the influence of an illegal drug. At the police station, after receiving *Miranda*[2] admonitions, defendant said he had smoked methamphetamine the night before.

The court held that in light of the facts, including the indications that defendant was under the influence of drugs, the history of heavy gang activity in the neighborhood, and defendant's baggy clothing, "the officer had an articulate, specific reason in order to conduct a cursory pat down search of the defendant." The court therefore denied the motion to suppress.

---

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

3. Standard of Review

We review the trial court's ruling on a motion to suppress evidence under a two-step process. First, we uphold the trial court's express or implied findings of fact if they are supported by substantial evidence. Second, we apply our independent judgment to determine whether those facts establish that the search was reasonable. (*People v. Leyba* (1981) 29 Cal.3d 591, 596-597, superseded by statute on another ground as stated in *People v. Trujillo* (1990) 217 Cal.App.3d 1219, 1223.)

4. Analysis

An officer may detain a person if the officer has a reasonable suspicion that criminal activity is afoot and that the person is connected with it. (*Illinois v. Wardlow* (2000) 528 U.S. 119, 123-124; *Terry v. Ohio* (1968) 392 U.S. 1, 30.) Reasonable suspicion must be based on specific, articulable facts rather than inchoate suspicion or a mere hunch. (*United States v. Sokolow* (1989) 490 U.S. 1, 7-8; *People v. Hernandez* (2008) 45 Cal.4th 295, 299.) In determining whether, under the totality of the circumstances, the officer had reasonable suspicion, the court may consider the officer's experience, knowledge, and training (*Hernandez*, *supra*, at p. 299) and the characteristics of the area where the person is detained, including the high-crime nature of the area, the time of day, and the lighting (*People v. Souza* (1994) 9 Cal.4th 224, 239-241; *People v. Foranyic* (1998) 64 Cal.App.4th 186, 189-190). The court may also consider the characteristics and behavior of the defendant, including nervousness, evidence of intoxication, and baggy clothing. While any one of those factors, standing alone, may not justify an investigative stop (e.g., *People v. Medina* (2003) 110 Cal.App.4th 171, 178

[mere presence at night in a high-crime area did not justify detention]), the court considers the totality of the circumstances. The court observed in *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1241 (*Frank V.*), "'[T]hat an area involved increased gang activity may be considered if it is relevant to an officer's belief the detainee is armed and dangerous. While this factor alone may not justify a weapon search, combined with additional factors it may.' [Citation.]"

We will assume for purposes of argument that defendant was detained when Officer Davis grasped his hands before beginning the patdown search. As the court explained in *Frank V.*, "Since Frank was physically restrained by the patdown, it constituted a detention. Unlike officer statements, which must be weighed in each case, there is a 'bright-line' rule uniformly applicable to all physical restraints. [Citation.]" (*Frank V.*, *supra*, 233 Cal.App.3d at p. 1240, fn. 3, citing *Terry v. Ohio*, *supra*, 392 U.S. at p. 16.)

To conduct a lawful patdown for weapons, "'[t]he officer need not be absolutely certain that the individual is armed; the 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.] There is no question that 'a perfectly reasonable apprehension of danger may arise long before the officer is possessed of adequate information to justify taking a person into custody for the purpose of prosecuting him for a crime.' [Citation.]" (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1081-1082.)

In *People v. Collier* (2008) 166 Cal.App.4th 1374, the court held that the facts that the defendant was in a car that smelled of marijuana and he was wearing baggy clothing

supported a patdown search for weapons. (*Id.* at p. 1377.) In *Frank V.*, the court held the following circumstances justified a patdown search for weapons: It was 9:45 at night, the neighborhood was known for gang activity; defendant and another were seen "leaving from the curb of a known gang house"; and defendant was wearing a heavy coat and twice put his hands in his pockets. (*Frank V.*, *supra*, 233 Cal.App.3d at pp. 1236, 1241.)

Here, as recounted above, Officer Davis was in an area known for recent and violent gang activity. He had personally come into contact with gang members in the neighborhood, some of whom had been armed with knives and other weapons. Defendant was dressed in baggy pants and a baggy jacket, and that clothing caused the officer concern because the officer could not see defendant's hands. Moreover, defendant showed signs of being under the influence, including dilated eyes; acting nervous, fidgety, and paranoid; a dry mouth; and quick speech. At one point, he put his hands in his pockets, although he removed them at the officer's request.

We conclude that under the totality of the circumstances, specific articulable facts justified defendant's detention for the purpose of conducting a patdown search for weapons. We therefore find no error in the denial of defendant's motion to suppress evidence.

B. Booking Fee

Defendant contends there was no substantial evidence to establish the amount of a booking fee or his ability to pay such fee under Government Code section 29550.2.

1. Forfeiture

The People contend defendant has forfeited his challenge to the booking fee because he failed to object to the fee at sentencing.[3] However, the People have addressed the issue on the merits and, because defendant has raised the alternative claim that his counsel was ineffective in failing to object to the fee, we will also reach the merits of the issue.

2. Analysis

a. Ability to pay

Defendant asserts that his booking fee was imposed under Government Code section 29550.2. That section applies to "[a]ny person booked into a county jail pursuant to any arrest by any governmental entity not specified in Section 29550 or 29550.1 . . . ." (Gov. Code, § 29550.2, subd. (a).) Government Code section 29550, subdivision (c) applies to persons arrested by a county officer or agent. Government Code section 29550.1 applies to a person arrested by an officer or agent of "[a]ny city, special district, school district, community college district, college, university, or other local arresting agency . . . ." Here, the record shows that a City of Hemet police officer arrested defendant. Thus, the booking fee must have been imposed under Government Code section 29550.1.

---

[3] The issue whether a defendant forfeits a claim that he is unable to pay a booking fee by failing to object to the fee is currently pending in the California Supreme Court. (*People v. McCullough (Antoine J.)* (2011) 193 Cal.App.4th 864 [123 Cal.Rptr.3d 341], review granted June 29, 2011, S192513.)

Government Code section 29550.2, subdivision (a), on which defendant relies, provides, "*If the person has the ability to pay*, a judgment of conviction shall contain an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution shall be issued on the order in the same manner as a judgment in a civil action, but the order shall not be enforceable by contempt. The court shall, as a condition of probation, order the convicted person to reimburse the county for the criminal justice administration fee." (Italics added.) In contrast, Government Code section 29550.1 provides for payment of the criminal justice administration fee by a convicted person but omits the above italicized language. Thus, Government Code section 29550.1 does not require a finding of ability to pay.

Defendant also relies on Government Code section 29550, subdivision (d)(2) to support his argument that the trial court was required to find his ability to pay before imposing a booking fee. That section provides: "The court shall, *as a condition of probation*, order the convicted person, based on his or her ability to pay, to reimburse the county for the criminal justice administration fee . . . ." (Gov. Code, § 29550, subd. (d)(2).) On its face, the subparagraph is inapplicable: Defendant was not granted probation but was sentenced to state prison.

We conclude the trial court was not required to find an ability to pay before imposing a booking fee under Government Code section 29550.1.

b. Amount of fee

Defendant further contends the booking fee was invalid because "there was no record, hearing, or substantial evidence establishing the actual administrative costs for booking."

We reject defendant's argument. Government Code section 29550 does not contemplate an evidentiary showing in the trial court to determine the amount of the fee; rather, determination of the amount of the fee is directed toward the county imposing the fee: "The fee imposed by a county pursuant to this section shall not exceed the actual administrative costs, including applicable overhead costs as permitted by federal Circular A-87 standards, as defined in subdivision (d), incurred in booking or otherwise processing arrested persons. For the 2005-2006 fiscal year and each fiscal year thereafter, the fee imposed by a county pursuant to this subdivision shall not exceed one-half of the actual administrative costs, including applicable overhead costs as permitted by federal Circular A-87 standards, as defined in subdivision (d), incurred in booking or otherwise processing arrested persons. . . ." (Gov. Code, § 29550, subd. (a)(1).) "Any increase in a fee charged pursuant to this section shall be adopted by a county prior to the beginning of its fiscal year and may be adopted only after the county has provided each city, special district, school district, community college district, college, or university 45 days written notice of a public meeting held pursuant to Section 54952.2 on the fee increase and the county has conducted the public meeting." (Gov. Code, § 29550, subd. (a)(2).) In addition, Government Code section 29550, subdivision (d) provides, "*When the court has been notified in a manner specified by the court* that a criminal justice

administration fee is due the agency," the court may or shall impose the fee as specified in other subdivisions of that section.

The People have requested this court to take judicial notice of the Riverside County Board of Supervisors' minutes and recommendation for approval of an increase in the Criminal Justice Administration Fee. The request is granted. The trial court may properly take judicial notice of local ordinances and "the official resolutions, reports, and other official acts of a city." (*Trinity Park, L.P. v. City of Sunnyvale* (2011) 193 Cal.App.4th 1014, 1027; Evid. Code, § 452, subd. (b).) The People assert, based on those documents, that on September 28, 2010, the Riverside County Board of Supervisors approved an increase in the criminal justice administration fee to $414.45. We presume under Evidence Code section 664 that official duty has been complied with—in other words, that the trial court "has been notified in a manner specified by the court that a criminal justice administration fee is due the agency." (Gov. Code, § 29550, subd. (d).) No further showing was required.

We note that in *People v. Pacheco* (2010) 187 Cal.App.4th 1392, on which defendant relies, the court remanded for further proceedings on the ground, among others, that a booking fee may not exceed actual costs of booking, and there was no evidence in the record of the actual administrative costs of the defendant's booking. (*Id.* at p. 1400.) We disagree with *Pacheco* to the extent it can be interpreted as requiring an evidentiary hearing on the actual administrative costs of booking. Such a requirement is inconsistent with Government Code section 29550, subdivisions (a), (c), and (d).

In summary, we find no error in the imposition of the booking fee.

IV. DISPOSITION

The judgment is affirmed.

CERTIFIED FOR PARTIAL PUBLICATION.

HOLLENHORST
Acting P. J.

We concur:

MCKINSTER
J.

MILLER
J.