THE PEOPLE,
v.
MARIA ELENA LOPEZ,
PEOPLE v. LOPEZ

S238627

Facts

On the morning of July 4, 2014, City of Woodland Police Officer Jeff Moe responded to an anonymous tip concerning erratic driving. The tip described the car, a dark-colored Toyota, and the area in which it was driving. Unable to locate the vehicle, Officer Moe asked dispatch to run a computer search of the license plate, then drove by the address where the car was registered. Not seeing the vehicle, he resumed his duties.

Around 1:30 p.m., Officer Moe received a second anonymous report concerning the same car. The tipster identified the car's location and asserted the driver, whom the tipster identified as "Marlena," "had been drinking all day." Again unable to locate the car, Officer Moe returned to the address where the car was registered. This time, he parked and waited. A few minutes later, defendant Maria Elena Lopez drove up and parked in front of the house.

Moe did not observe any traffic violations or erratic driving. But believing the driver to be "Marlena," Officer Moe approached the car. Moe testified at the suppression hearing that Lopez saw him, looked nervous, got out of the car, and began walking away from him. Moe did not smell alcohol or note any other signs of intoxication. But because he "wanted to know what her driving status was based on the allegations earlier, plus [he] wanted to identify who she was," Moe asked Lopez if she had a driver's license. Lopez said that she did not. Without asking Lopez for her name or other identifying information, Moe detained her by placing her in a control hold. When Lopez tried to pull away, Moe handcuffed her.

Officer Moe then asked Lopez "if she had . . . any identification possibly within the vehicle." When Lopez responded "there might be," a second officer on the scene opened the passenger door, retrieved a small purse from the passenger seat, and handed it to Moe. Moe then searched the purse and found a baggie containing methamphetamine in a side pocket.

Lopez was charged with misdemeanor violations of possessing methamphetamine (Health & Saf. Code, § 11377, subd. (a)) and driving when her license to drive had been suspended or revoked (Veh. Code, § 14601.2, subd. (a)). She filed a motion to suppress evidence (Pen. Code, § 1538.5, subd. (a)(1)), arguing she had been unlawfully detained and her purse unlawfully searched.

Issue

The issue is whether to continue to adhere to the rule of *Arturo D*'s identification-search exception authorizing warrantless vehicle searches whenever a driver stopped for a traffic infraction fails to produce a license or other satisfactory identification documents upon request.

Rule

The justification for *Arturo D.*'s identification-search exception was the need to ensure that a law enforcement officer has the information necessary to issue a citation and notice to appear for a traffic infraction—despite drivers' incentives to conceal that information, and notwithstanding safety concerns that might arise if officers were compelled to allow drivers to retrieve the relevant documents themselves. (*Arturo*

D) To give effect to these important interests, *Arturo D.* considered a limited warrantless search to be more reasonable than the alternative of subjecting the driver to full custodial arrest, which would impose substantially greater burdens on drivers and law enforcement alike.

But *Arturo D.*'s discussion of the issue was not exhaustive. Indeed, experience and common sense suggest a range of options that are both less intrusive than a warrantless search and less burdensome than a full custodial arrest. Closer attention to the presence or absence of circumstances justifying the invasion of privacy alters the appraisal of the law enforcement interests at stake: To the extent there are adequate alternative avenues for obtaining the information needed by law enforcement, the interest in searching a vehicle without a warrant necessarily carries less weight.

The first alternative is straightforward: an officer can ask questions. If a driver professes not to have a driver's license or other identification, the officer can ask for identifying information such as the driver's full name and its spelling, address, and date of birth. The answers need not be accepted at face value. Rather, they may be checked against Department of Motor Vehicles (DMV) records—just as driver's licenses themselves are routinely checked against such records to verify the driver's identity and the validity of the license. (See Gov. Code, §§ 15150–15167 [providing for statewide law enforcement telecommunications system]; Veh. Code, § 1810.5 [authorizing law enforcement telephone access to DMV records]; see also, e.g., *People v. Boissard* (1992) 5 Cal.App.4th 972, 978–979 [records check of individual who failed to produce identification at officer's request]; see generally 4 LaFave, Search and Seizure, *supra*, § 9.3(c), pp. 508–511 [noting that such records checks, which are typically conducted by computer or radio, are both routine and critical to the operation of any system of citation].) Similarly, the detainee's size and physical appearance, such as height, weight, eye color, and hair color, may be subject to verification against such records. (See *People v. Hunt* (1990) 225 Cal.App.3d 498, 503.) Officers may also check the name and address against the DMV's registration record for the vehicle and explore any discrepancies.[1] Officers have discretion to accept such oral evidence of identity for purposes of issuing a citation if they determine the information to be sufficiently reliable. (*People v. McKay* (2002) 27 Cal.4th 601, 622 (*McKay*); *Arturo D.*, *supra*, 27 Cal.4th at p. 68, fn. 4.) If, instead, officers have reason to believe they have been lied to, they have other options at their disposal, as discussed below.[2]

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[1] It perhaps states the obvious to observe that telecommunications technology has advanced significantly since 2002, when *Arturo D.* was decided, and will continue to evolve in ways that make remote verification of a detainee's information and identity easier for law enforcement.

[2] In addition, an officer can ask for and examine written forms of identification other than a driver's license, such as a student identification or health insurance card. As we acknowledged in *Arturo D.*, the Vehicle Code "permits an officer who plans to issue a Vehicle Code citation to accept 'other satisfactory evidence of [the driver's] identity.' " (*Arturo D.*, *supra*, 27 Cal.4th at p. 68, fn. 4, quoting Veh. Code, § 40302, subd. (a); cf., e.g., *U.S. v. Zubia-Melendez* (10th Cir. 2001) 263 F.3d 1155, 1161; *U.S. v. Reyes-Vencomo* (D.N.M. 2012) 866 F.Supp.2d 1304, 1338.)

And as case law demonstrates, in some circumstances, an officer may be personally acquainted with the driver or may be able to obtain adequate identifying information from others who are. (*McKay*, *supra*,

The officer may also seek the driver's consent to search the vehicle for identification. (See *Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 219 ["a search that is conducted pursuant to consent" is a well-established exception to the warrant and probable cause requirements].) The driver can then decide whether to permit the officer to retrieve the identification, and if so, whether to limit the places within the vehicle where the officer may look for it.

The Attorney General, echoing a suggestion in *Arturo D.*, dismisses the value of consent in this context; he suggests that any consented-to search might later be challenged as the product of coercion. (See *Arturo D.*, *supra*, 27 Cal.4th at p. 76, fn. 17.) Perhaps so, but we are unwilling to assume that every such challenge would necessarily have merit. "Police officers act in full accord with the law when they ask citizens for consent. It reinforces the rule of law for the citizen to advise the police of his or her wishes and for the police to act in reliance on that understanding. When this exchange takes place, it dispels inferences of coercion." (*United States v. Drayton* (2002) 536 U.S. 194, 207.) If an officer asks for permission to enter a car to retrieve the driver's identification, we see no categorical reason why a driver may not validly consent to a full or limited search of the vehicle for that purpose, just as drivers regularly consent to other types of vehicle searches. (See, e.g., *Florida v. Jimeno* (1991) 500 U.S. 248, 249–250 [detained driver validly consented to search of his vehicle for narcotics]; *People v. Grant* (1990) 217 Cal.App.3d 1451, 1456–1462 [search of vehicle for identification valid based on consent].)[3]

Other established exceptions to the warrant requirement may also permit a vehicle search. For example, exigent circumstances may be shown based on the particular situation an officer faces. (*U.S. v. Haley* (8th Cir. 1978) 581 F.2d 723, 725–726; see *Riley v. California*, *supra*, 573 U.S. at p. 402 ["Such exigencies could include the need to prevent the imminent destruction of evidence in individual cases, to pursue a fleeing suspect, and to assist persons who are seriously injured or are threatened with imminent injury . . . [¶] . . . The critical point is that . . . the exigent circumstances exception requires a court to examine whether an emergency justified a warrantless search in each particular case"].)

In circumstances where an officer believes he or she has been given false identification information, other exceptions may come into play. At that point, the officer is no longer solely concerned with issuing an enforceable traffic citation; lying to a police officer about one's identity is a criminal offense punishable by imprisonment in county jail. (Pen. Code, § 148.9; Veh. Code, §§ 31, 40000.5.) Under the automobile exception to the warrant requirement, an officer may search a vehicle if the officer has probable cause to believe that evidence of a crime will be found inside. (E.g., *United States v. Ross* (1982) 456 U.S. 798, 799.)

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27 Cal.4th at p. 622; see, e.g., *U.S. v. Davis* (11th Cir. 2010) 598 F.3d 1259, 1261 [after detainee gave false name, bystanders supplied true name, which officer was then able to verify].)

In the absence of other satisfactory identification, an officer "may require the arrestee to place a right thumbprint" on a notice to appear. (Veh. Code, § 40500, subd. (a); accord, §§ 40303, subd. (a), 40504, subd. (a).)

[3] At oral argument, the Attorney General noted that the Supreme Court has placed limits on the extent to which a motorist may be *implied* to have consented to a search by virtue of choosing to drive on public roads. (See *Birchfield v. North Dakota* (2016) 579 U.S. ___, ___–___ [136 S.Ct. 2160, 2185–2186].) We do not suggest consent could be implied here, only that express consent could be sought, and no reason appears as to why, if granted, it would be presumptively invalid.

Ordinarily, a driver's license or other identification will supply no evidence of a traffic violation. (See *State v. Scheer* (1989) 99 Or.App. 80, 83 [781 P.2d 859, 860].) But identification may well supply evidence of the crime of lying about one's identity (see, e.g., *State v. Fesler* (1984) 68 Or.App. 609, 613 [685 P.2d 1014, 1017]), and an officer may search a vehicle upon probable cause to believe evidence of such lying will be found therein (*State v. Bauman* (Minn.Ct.App. 1998) 586 N.W.2d 416, 422). Relatedly, some out-of-state courts have upheld vehicle searches for identification under the search incident to arrest exception, which authorizes searching an arrestee's vehicle for evidence relevant to his or her crime when an officer has reason " 'to believe evidence relevant to the crime of arrest might be found in the vehicle.' " (*Gant*, *supra*, 556 U.S. at p. 343; see *Deemer v. State* (Alaska Ct.App. 2010) 244 P.3d 69, 75 [search incident to arrest for lying to officer]; *State v. Gordon* (1991) 110 Or.App. 242, 245–246 [821 P.2d 442, 443–444] [same]; *Armstead v. Com.* (2010) 56 Va.App. 569, 577 [695 S.E.2d 561] [same].)[4]

The permissibility of such searches depends in the first instance on the existence of probable cause to believe that a particular driver is, in fact, lying about his or her identity. Thus, for example, in *Armstead*, the court explained that the officer had probable cause to believe the driver was lying about his identity based on computer checks, notified the driver he was under arrest, and therefore could search the vehicle for evidence of the crime of providing false identity information. (*Armstead v. Com.*, *supra*, 695 S.E.2d at pp. 563–566 [upholding search under *Gant*].) *Arturo D.*, in contrast, had authorized a search any time a detainee is unable to supply identification—without any requirement that the officer have probable cause or even a reasonable suspicion that the detainee has lied about his or her identity.[5]

When an officer has obtained satisfactory evidence of a detainee's identity, he or she may cite and release the detainee. (Pen. Code, § 853.5, subd. (a); Veh. Code, §§ 40303, 40500, 40504; *People v. Superior Court* (*Simon*) (1972) 7 Cal.3d 186, 199.)[6] The officer also has discretion to release the suspect with a

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[4] The automobile exception and the "evidence relevant to the crime of arrest" exception overlap to some degree, but the former applies independent of any arrest. To the extent the latter exception is contingent on an arrest, we express no view whether any search may come before, or only after, the arrest. (Cf. *People v. Macabeo* (2016) 1 Cal.5th 1206, 1216–1219.)

[5] In so doing, *Arturo D.* authorized a new sort of suspicionless search. The high court has long held that "[e]xceptions to the requirement of individualized suspicion are generally appropriate only where the privacy interests implicated by a search are minimal and where 'other safeguards' are available 'to assure that the individual's reasonable expectation of privacy is not "subject to the discretion of the official in the field." ' " (*New Jersey v. T. L. O.* (1985) 469 U.S. 325, 342, fn. 8, quoting *Delaware v. Prouse*, *supra*, 440 U.S. at pp. 654–655.) After *Gant*, the privacy interests implicated by identification searches cannot be dismissed as minimal. And the Attorney General has identified no "safeguards" that would limit an officer's discretion to conduct such a search to facilitate writing a traffic citation.

[6] Citation and release is employed in a wide range of nonvehicle circumstances, from jaywalking to fare evasion to cyclist moving violations, yet no one argues that failure to produce identification upon request, without more, justifies a warrantless search through pockets or purses. The idea that, without authority for a warrantless identification search unique to *this* context, officers will be forced to issue unenforceable citations and "traffic laws can be flouted with impunity" (dis. opn. *post*, at p. 14), is a fiction; an arrestee is

warning against committing future violations. (Pen. Code, § 849, subd. (b)(1); *People v. McGaughran*, *supra*, 25 Cal.3d at p. 584.) And finally, if no other path seems prudent or permissible, the officer can arrest the detainee and take him or her to be booked into jail for the traffic violation. (Veh. Code, § 40302; *Atwater v. Lago Vista* (2001) 532 U.S. 318, 323; *Knowles*, *supra*, 525 U.S. at p. 118; *McKay*, *supra*, 27 Cal.4th at pp. 620–625.) In the end, arrest is one option—but it is certainly not the only alternative to a warrantless search.[7]

The Fourth Amendment does not, of course, require law enforcement to employ the least intrusive means of achieving its objectives. (*Board of Ed. of Independent School Dist. No. 92 of Pottawatomie Cty. v. Earls* (2002) 536 U.S. 822, 837.) But the Fourth Amendment does require law enforcement to act reasonably. If, as *Gant* instructs, a substantial intrusion on personal privacy must be adequately justified by genuine need, the availability of so many alternative means for achieving law enforcement ends tends to undermine the notion that the intrusion is reasonable. (See *Birchfield v. North Dakota*, *supra*, 579 U.S. at pp. ___–___ [136 S.Ct. at pp. 2184–2185] [warrantless blood test of person suspected of driving while intoxicated violates 4th Amend. because equally effective less intrusive alternative exists]; *Delaware v. Prouse*, *supra*, 440 U.S. at p. 659 [striking down discretionary spot checks for driver's licenses and registration in light of "the alternative mechanisms available, both those in use and those that might be adopted" to satisfy the government's public safety interests].)

The dissent insists that warrantless identification searches are a necessary tool for coping with drivers who seek to deceive officers concerning their identity but who have left evidence of that deception in their vehicles. (Dis. opn. *post*, at pp. 4–7.) (For those who have not, any search would of course be futile.) This idea is belied by the great many cases in which officers have successfully ferreted out this sort of deception through the ordinary investigative techniques we have already described.[8] And, as we have already

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eligible for citation and release only when the arrestee is "able to convince the officer—either by exhibiting his driver's license or by 'other satisfactory evidence'—that the name he is signing on the written promise to appear corresponds to his true identity" (*People v. Superior Court* (*Simon*), *supra*, 7 Cal.3d at p. 201; see Veh. Code, § 40302, subd. (a)).

[7] The dissent suggests that because custodial arrest is a possible outcome of such an encounter, authorizing officers to perform a warrantless, suspicionless, nonconsensual search of the driver's belongings actually "serves to *protect* [the] privacy interests" the Fourth Amendment was intended to safeguard. (Dis. opn. *post*, at p. 13.) This is a curious notion. In the absence of a categorical traffic-stop identification-search exception, both driver and officer would have precisely the same range of options for locating and producing identification; the only difference is that it would be up to the driver, not the officer, to decide whether to allow in whole or in part a search of the vehicle to supply the necessary identification. Stripping the driver of that choice cannot seriously be described as the option that better protects the constitutional right of the people to be secure in their persons and effects.

[8] A small but representative sample includes: *People v. Casarez* (2012) 203 Cal.App.4th 1173, 1178 (identification based on distinctive tattoos); *Loveless v. State* (2016) 337 Ga.App. 894, 895 [789 S.E.2d 244, 245] (database search revealed driver had given false name; vehicle tag search revealed driver's true identity; license search on vehicle's registered owner provided driver's photograph); *State v. Cannady* (Me. 2018) 190 A.3d 1019, 1021 (officer transported driver to jail for fingerprinting after officer was unable to verify

explained, officers who have probable cause to believe a driver is lying about his or her identity already have search options at their disposal in appropriate circumstances. (*Ante*, at pp. 26–28.) But the warrant exception we are asked to apply here is not limited to cases of deception; it applies to honest drivers and dishonest drivers alike. Indeed, it applies even when, as here, the driver has not so much as been given the chance to identify herself before having her vehicle, and the personal belongings contained therein, opened for official examination.

The dissent worries that in the absence of a categorical authorization to search, officers may not be able to achieve absolute certainty about the identity of some subset of traffic violators before issuing traffic tickets. (Dis. opn. *post*, at pp. 4–9; see *id.* at p. 7 [driver may give sibling's name], p. 8, fn. 5 [driver may conceal face with a tinted visor or niqab].) But the same is true under the dissent's own proposed rule.[9] In the end, the test for whether an exception should be recognized is not whether, in its absence, there might be some cost in effective enforcement of the traffic laws; it is, instead, whether the tradeoff to lower that risk is worth the coin in diminished privacy. The price of giving officers the "discretion to rummage at will among a person's private effects" whenever that person has committed a traffic infraction is a high one. (*Gant*, *supra*, 556 U.S. at p. 345, fn. omitted.) It is not a price we should lightly require California drivers to pay.

Analysis

Here, Officer Moe had a tip that provided the driver's name, and he was able to locate the driver because she pulled her car up in front of the address where dispatch informed him the vehicle was registered. He could have employed any one of several approaches to ascertain Lopez's identity once she exited the car. But Officer Moe never so much as asked Lopez her name. Instead, after detaining Lopez for a suspected traffic infraction, the officer proceeded directly to searching the purse on the passenger's seat. Under *Gant*, Officer Moe could not have searched Lopez's vehicle if he had arrested her for unlicensed driving instead of simply detaining her.[10] Searching Lopez's vehicle for her personal identification before she was arrested was no less unreasonable.

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driver's identity with name supplied and driver "had difficulty providing an address, phone number, and social security number"; driver confessed to true identity en route to jail); *People v. Vasquez* (2001) 465 Mich. 83, 101–102 [631 N.W.2d 711, 722] (driver recognized by other officers during booking); *State v. Ford* (Mo.Ct.App.) 445 S.W.3d 113, 117 (confession to true identity following record check and further questioning); cf. *U.S. v. Pena-Montes* (10th Cir. 2009) 589 F.3d 1048, 1051 (database search revealed defendant had given false name and other identifying information; defendant's true identity revealed through fingerprinting).

[9] The dissent's preferred rule would do nothing to assist in the apprehension of the wrongdoer who manages to slip his or her license into a crumpled fast-food bag (*Arturo D.*, *supra*, 27 Cal.4th at p. 86)—or, for that matter, who simply left his or her license at home.

[10] The Attorney General argues in passing that the search here would have been permissible under *Gant* because Officer Moe had probable cause to arrest Lopez for driving without a license. But no reason appears to think evidence of that crime would be found in the car. (*Gant*, *supra*, 556 U.S. at p. 343 ["In many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the

In sum, California remains in a distinct minority—indeed, a minority of one—when it comes to approving a warrantless vehicle search solely for personal identification. "Although holdings from other states are not controlling, and we remain free to steer a contrary course," this is a case in which "the near unanimity" of out-of-state authority "indicates we should question the advisability of continued allegiance to our minority approach." (*Moradi-Shalal v. Fireman's Fund Ins. Companies*, *supra*, 46 Cal.3d at p. 298.) This is particularly true given the nature of the issue before us. It is noteworthy that the vehicle search for a driver's license anywhere "such documentation reasonably may be expected to be found" (*Arturo D.*, *supra*, 27 Cal.4th at p. 65) is authority the police of this state did without for quite some time after the invention of the automobile. But it is especially telling that the police of all other states appear to do without that authority to this day, despite facing much the same need to identify traffic violators for purposes of issuing citations. To reaffirm the exception now would leave California out of step not only with United States Supreme Court precedent, but also with every other jurisdiction in the nation.

Reconsidering the scope of *Arturo D.* is not a task we undertake lightly. Adherence to precedent is always " 'the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.' " (*Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 879, quoting *Payne v. Tennessee* (1991) 501 U.S. 808, 827.) It is also " ' "usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than it be settled right." ' " (*Johnson*, at p. 879, quoting *Payne*, at p. 827.)

But after considering both further guidance from the United States Supreme Court and the practices of every other state in the nation, we conclude the time has come to correct a misperception of the constraints of the Fourth Amendment in this context. We recognize that law enforcement agencies have crafted policies in reliance on *Arturo D.*, and our decision today will require them to adopt a different approach in scenarios like the one presented here. But inasmuch as subsequent legal developments have called the validity of the traffic-stop identification-search exception into question, the change in approach is warranted.

Conclusion

For these reasons, we now hold the Fourth Amendment does not contain an exception to the warrant requirement for searches to locate a driver's identification following a traffic stop. To the extent it created such an exception, *In re Arturo D.*, *supra*, 27 Cal.4th 60, is overruled and should no longer be followed.

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vehicle contains relevant evidence"].) A license is not something police need to search for as evidence of driving without a license; at most, it might provide a *defense* to the charge. (*State v. Scheer*, *supra*, 781 P.2d at p. 860; see *State v. Conn* (2004) 278 Kan. 387, 392–394 [99 P.3d 1108, 1112–1113]; *State v. Lark* (App.Div. 1999) 319 N.J.Super. 618, 626–627 [726 A.2d 294, 298–299], affd. (2000) 163 N.J. 294 [748 A.2d 1103].)