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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RENE LAMBERT GONZALEZ,

Defendant and Appellant.

2d Crim. No. B294773  
(Super. Ct. No. 2014039582)  
(Ventura County)

After the trial court denied his motion to suppress evidence (Pen. Code, § 1538.5, subds. (a)(1)(A) & (f)(1)), Rene Lambert Gonzalez pled guilty to transporting a controlled substance (Health & Saf. Code, § 11379, subd. (a)) and admitted that he served three prior prison terms (Pen. Code, § 667.5, subd. (b)). The court struck two of the prior prison term enhancements and imposed a split sentence of four years, to be served as two years in county jail followed by two years of mandatory supervision. Gonzalez contends that the arresting officer lacked probable cause to arrest him. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

Simi Valley Police Officer Chris Mulligan and his partner pulled Gonzalez over after observing him drive through a four-way stop without stopping. (Veh. Code, § 22450.) Mulligan asked Gonzalez for his driver's license. Gonzalez had a "very agitated attitude for the situation," rapid speech, and avoided eye contact with Mulligan. Mulligan considered these to be "beginning red flags."

The officers asked Gonzalez and his passenger to step out of the car. Gonzalez became confrontational and argumentative. After a minute or two, he complied with the request.

Officer Mulligan ordered Gonzalez to sit on the curb. He noticed that Gonzalez's "pupils were having little to no reaction to the sunlight." He took Gonzalez's pulse 12 minutes after the stop, and again 26 minutes after the stop. The pulse rates were 108 and 126 beats per minute, respectively. He also had Gonzalez perform a Romberg exercise.<sup>1</sup> He estimated 28 seconds as 30 seconds, which is within normal parameters. But he displayed eyelid flutters and a pronounced neck pulse during the exercise, which Mulligan testified is common with recent use of a stimulant such as methamphetamine or cocaine.

Officer Mulligan concluded that there was probable cause to believe that Gonzalez was under the influence of a stimulant and arrested him. Mulligan then searched Gonzalez and found four plastic bindles in his jacket pocket that tested

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<sup>1</sup> A Romberg exercise is a test where the subject is asked to close their eyes and estimate the passage of 30 seconds. (See *People v. Bejasa* (2012) 205 Cal.App.4th 26, 33.)

positive for methamphetamine. Gonzalez also had approximately \$250 in his front pocket and approximately \$500 in his wallet.

### **DISCUSSION**

Gonzalez contends that the trial court erred when it denied his motion to suppress evidence because there was not probable cause for arrest. We disagree.

An arrest is valid if supported by probable cause, which “exists if facts known to the arresting officer would lead a person of ordinary care and prudence to entertain an honest and strong suspicion that an individual is guilty of a crime.” (*People v. Kraft* (2000) 23 Cal.4th 978, 1037.) Observations of an experienced narcotics officer are considered in light of the officer’s specialized knowledge. (*People v. Medina* (1972) 7 Cal.3d 30, 37; *People v. Maltz* (1971) 14 Cal.App.3d 381, 390.) There is no “exact formula” for the determination of probable cause; each case is decided on its own facts and circumstances. (*Maltz*, at p. 390.) We review the factual findings for substantial evidence and independently assess whether the search satisfies the Fourth Amendment. (*People v. Brown* (2015) 61 Cal.4th 968, 975.)

The finding of probable cause is supported by Officer Mulligan’s observations of Gonzalez. He had a “very agitated attitude for the situation.” His speech was rapid. He avoided eye contact with the officer. His pupils had little or no reaction to sunlight. He had a rapid pulse rate of 108 to 126 beats per minute. His eyelids fluttered and his neck pulsed during the Romberg exercise. These observations gave Mulligan probable cause to believe that Gonzalez was under the influence of a controlled substance. (Health & Saf. Code, § 11550, subd. (a); *People v. Alcala* (1959) 169 Cal.App.2d 468, 470-471 [rapid speech, dilated pupils, nervous glancing from one person to

another]; *People v. Bui* (2001) 86 Cal.App.4th 1187, 1191 [pupils dilated and slow to constrict, eyelid tremors, elevated pulse, elevated respiration, inaccurate time perception, agitation]; *People v. Crowder* (2000) 79 Cal.App.4th 1365, 1367 [pupils react slowly to light, elevated pulse, thick white coating on tongue, eyelids tremble during Romberg test]; *People v. Nottoli* (2011) 199 Cal.App.4th 531, 539-540 [nervous, “ill at ease,” constricted and fixed pupils, rapid eye tremors, inaccurate time estimate, tense and rigid muscle tone, dry mouth, rapid breath, impaired judgment, elevated pulse].) The arrest and search incident to arrest were thus valid.

Because the arrest was supported by probable cause, the arrest and search incident to arrest were valid and the motion to suppress was properly denied. (*People v. Macabeo* (2016) 1 Cal.5th 1206, 1213-1214.)

#### **DISPOSITION**

The judgment is affirmed.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Bruce A. Young, Judge

Superior Court County of Ventura

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