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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN PEREZ GARCIA,

Defendant and Appellant.

2d Crim. No. B276792
(Super. Ct. No. 2015012566)
(Ventura County)

Juan Perez Garcia appeals a judgment following the denial of his motion to suppress evidence (Pen. Code, § 1538.5) obtained in a strip search before he was placed in jail.[1] Garcia subsequently pled guilty to bringing drugs into a jail (§ 4573), a felony. We conclude, among other things, that the search did not violate his constitutional rights and the trial court properly denied his motion. We affirm.

[1] All statutory references are to the Penal Code.

FACTS

On April 18, 2015, Police Officer Andrew Grande arrested Garcia for a domestic violence felony. (§ 273.5, subd. (a).) Garcia had "slapp[ed] the victim in the face leaving a visible injury." Grande transported Garcia to a "pretrial detention facility" for booking.

Sheriff Deputy Matthew Hirsh testified Garcia was "strip-searched" before being "housed in [the] general population" of the jail. The purpose of the search was "to keep drugs and other contraband from getting into the housing unit."

The search was part of a standard procedure for inmates booked on felony charges. After inmates are booked, they are given the option to take a shower. The inmate is then required to stand in front of a "window" so the deputy can "see their entire body." Male inmates are told "to lift their testicles." They then must turn around, "bend over at their waist, spread their butt cheeks with their hands and cough."

Hirsh performed this procedure with Garcia. He recovered a small plastic bag containing "approximately 2.7 grams of methamphetamine."

The People filed a felony complaint alleging that Garcia committed "the crime of bring[ing] drugs into a jail" (§ 4573) (count 1) and that he possessed illegal drugs in a "jail facility" (§ 4573.6) (count 2). (Capitalization omitted.)

At his preliminary hearing, Garcia's counsel moved to suppress the evidence seized in the search. He said that "there's no individualized suspicion" that Garcia possessed drugs.

The trial court denied the motion. It found "the search was done in a reasonable manner."

Garcia's counsel filed a "renewed motion to suppress." He claimed that "the state action here required 'known facts indicating that the inmate is concealing a weapon or contraband and a strip search may reveal it.'" The trial court denied the motion. Garcia subsequently pled guilty to count 1.

DISCUSSION

The Validity of the Strip Search

Garcia contends the trial court erred by denying his suppression motion. He claims that "there was no evidence that [he] was given a reasonable chance to arrange release by bail bond before the strip search." (Capitalization omitted.)

The People contend this issue is forfeited because Garcia did not raise it in his suppression motions in the trial court. We agree. Factual and legal issues not raised by defendants in suppression motions are forfeited on appeal. (*People v. Williams* (1999) 20 Cal.4th 119, 136.) Garcia did not raise this issue in the trial court. He did not present evidence to permit the trial court to make factual findings regarding his ability to make bail. He consequently did not preserve a factual record to raise this claim. (*Ibid.*) But even on the merits, the result is the same.

"In reviewing the trial court's ruling on the suppression motion, we uphold any factual finding, express or implied, that is supported by substantial evidence, but we independently assess, as a matter of law, whether the challenged search or seizure conforms to constitutional standards of reasonableness." (*People v. Hughes* (2002) 27 Cal.4th 287, 327.)

"[C]orrectional officials must be permitted to devise reasonable search policies to detect and deter the possession of contraband in their facilities." (*Florence v. Board of Chosen Freeholders of the County of Burlington* (2012) 566 U.S. 318, 328.)

"The task of determining whether a policy is reasonably related to legitimate security interests is 'peculiarly within the province and professional expertise of corrections officials.'" (*Ibid.*)

Here there is no showing that the jail authorities violated California law by strip searching any categories of detainees who are exempt from that type of search. (§ 4030 [strip search provisions for arrestees].)

Garcia contends "the prosecution failed to establish the requirements necessary for a strip search to be conducted without reasonable suspicion." We disagree.

"[A]n arrestee could be strip searched without individualized suspicion if the arrestee would be introduced into the general jail population." (*Edgerly v. City and County of San Francisco* (9th Cir. 2010) 599 F.3d 946, 957.) "In those circumstances, the institutional need to prevent arrestees from bringing contraband into the jail justifie[s] . . . 'the invasion of personal rights that the search entails.'" (*Ibid.*) Consequently, courts have held that jail policies "requiring strip searches of all arrestees classified for custodial housing in the general population" are "facially reasonable under the Fourth Amendment." (*Bull v. City and County of San Francisco* (9th Cir. 2010) 595 F.3d 964, 982.)

Here Garcia was "strip-searched" before being "housed in [the] general population" of the jail. The search was conducted pursuant to "a standard protocol" for inmates "booked on a felony charge" to prevent drugs from entering into the jail's inmate population. Garcia was arrested for a domestic violence felony. (§ 273.5, subd. (a).)

Garcia cites federal cases where courts held that some detainees could not be subject to strip searches. But that

involved a Ninth Circuit "line of precedent requiring reasonable suspicion to strip search arrestees charged with *minor offenses who are not classified for housing in the general jail population*." (*Edgerly v. City and County of San Francisco*, *supra*, 599 F.3d at p. 957, italics added.) Garcia, however, was not charged with a minor offense, and he was classified for housing in the general jail population.

"Courts have consistently recognized a distinction between detainees awaiting bail and those entering the jail population when evaluating the necessity of a strip search under constitutional standards." (*Cottrell v. Kaysville City, Utah* (10th Cir. 1993) 994 F.2d 730, 735.) "[T]he security concerns inherent in a bail situation are very different from those present when the detainee will enter the jail for a greater length of time." (*Ibid.*)

Moreover, here the trial court found that "there were legitimate interests in conducting the search and . . . the search was done in a reasonable manner." (*People v. Collins* (2004) 115 Cal.App.4th 137, 154 ["the relevant inquiry is whether under all of the circumstances the search was reasonable"].) Sheriff Deputy Hirsh testified that "inmates will try and smuggle drugs and other contraband into the facility . . . in their buttocks or in their rectal cavity." He said a search of these areas is "important for the safety and the security of the facility, for the safety and security of the inmates, as well as the deputies." Garcia was arrested for a felony. Hirsh also said an inmate who has drugs "could be targeted for assault by other inmates." There was no evidence that the search procedure was unduly intrusive or unreasonable. It was typical of search procedures commonly used by jail officials which have been upheld by the courts. (*Florence v. Board of Chosen Freeholders of the County of*

Burlington, *supra*, 566 U.S. at pp. 323-324.) Garcia has not shown the court's findings were unsupported by the record. The search met the constitutional standards of reasonableness. There was no error.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Ryan J. Wright, Judge

Superior Court County of Ventura

Wayne C. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

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