Filed 4/13/15 P. v. Alamillo CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. RAFAEL ALAMILLO, Defendant and Appellant.	B253659 (Los Angeles County Super. Ct. No. BA399567)

APPEAL from a judgment of the Superior Court of the County of Los Angeles, Gail Ruderman Feuer, Judge. Affirmed.

William S. Pitman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Michael R. Johnsen, Supervising Deputy Attorney General, Gary A. Lieberman, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Rafael Alamillo (defendant) was convicted of possession for sale of a controlled substance, methamphetamine (Health & Saf. Code, § 11378[1]). Defendant appeals from his judgment of conviction, challenging the denial of his motion to suppress evidence. On appeal, defendant contends that his "pat down" search was illegal. We affirm.

BACKGROUND

A. Factual Background[2]

1. Prosecution Evidence

a) Deputy Hwang

On July 3, 2012, Deputy Hwang was conducting a surveillance of a residence located in East Los Angeles. He was part of a group of law enforcement officers that was going to search the residence pursuant to a search warrant.[3]

Deputy Hwang saw Frias arrive in a minivan and enter the residence. A few minutes later, Deputy Hwang saw defendant arrive in a vehicle and approach a door to

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[1] All statutory citations are to the Health & Safety Code unless otherwise noted.

[2] The statement of background facts is taken from the hearing on defendant's motion to suppress the evidence under Penal Code section 1538.5. The prosecutor called as witnesses Deputy Raymond Hwang, Detective Jeff Alvarado, and Sergeant Kelly Huffman, from the Los Angeles County Sheriff's Department.

[3] The search warrant "authorized a search of the residence, suspect Gerardo Frias ('Frias'), and 'any person(s) whose identity has not been established and is present at the time of the search, . . . [and a]ny person(s) who are present at the location, who are involved in the possession and/or sales of narcotics.'" The trial court ruled that the prosecution could not rely on the warrant to support the search of defendant.

the residence. The door opened, and defendant appeared to have a 30 to 60 second conversation with someone inside the residence.

After the door to the residence closed, defendant "met up with" another man in the front yard, and they appeared to speak for a few seconds. Frias exited the residence, engaged in a short conversation with defendant and the other man, and left in the minivan. After Frias left, defendant and the other man 'h[ung] out" in the front yard. About 10 to 15 minutes after Frias left in the minivan, the other members of the search team arrived at the scene, and they detained defendant. Deputy Hwang never saw a weapon in defendant's hands, or a weapon on his person or on the persons of anyone else who was in the front yard other than the peace officers.

b) Detective Alvarado

Detective Alvarado had been a deputy sheriff for approximately 15 years, had been assigned to the narcotics bureau for approximately four years, had training and experience in the area of narcotics, and had testified about 20 times as an expert witness regarding narcotics. Detective Alvarado was in radio contact with Deputy Hwang, who said to him that it appeared that "Mr. Alamillo" briefly had contact with Frias. Frias left the residence in his minivan while defendant remained in the front yard. Detective Alvarado instructed patrol deputies to conduct a traffic stop of the minivan. After the traffic stop, Detective Alvarado made contact with Frias and informed him of the search warrant. In response, Frias denied having "any connection" with the residence.[4]

When Detective Alvarado went to the residence to execute the search warrant, he saw three men, including defendant, standing together in the front yard of the residence. Detective Alvarado testified, "We detained those 3 individuals initially, and then we . . . secured the residence, clearing it of any other possible suspects or threats." Four other people, who were in the back yard or inside a back house, were also detained and escorted to the front yard.

[4] Approximately 10 days before Detective Alvarado applied for the search warrant, he saw Frias enter and exit the residence.

As to defendant, the law enforcement officers instructed him to "show [them] his hands and lie down on the ground" with his hands "out to his sides." Defendant complied with the instructions and did not engage in any activity that caused Detective Alvarado to believe defendant possessed a weapon.

For officer safety, everyone detained was searched for weapons or any other illegal contraband. Detective Alvarado testified that "any individuals that are commonly detained on the site of search warrants are patted down for weapons," Detective Alvarado testified that based on his training and experience, it was common for narcotics dealers and purchasers to carry weapons, and concerning "any narcotic search warrant we have reason to believe that every individual [detained] could be armed."

Detective Alvarado testified that at the time Sergeant Huffman conducted a pat down search of defendant, Detective Alvarado believed that defendant was involved in the possession or sales of narcotics. Detective Alvarado testified that his conclusion was "[b]ased on the quick contact [defendant] had with [Frias], usually the way we review the behaviors between narcotic dealers and narcotic buyers is that it's more of a business type relationship. It's not one that you would commonly see as . . . two friends of family members hanging out so to speak. So this seemed to be more of like a business relationship. Quick contacts. [Defendant] go[es] up, [he] talks to [Frias] briefly. [Frias] then leaves the location, possibly to get either money or additional narcotics. . . . [¶] On top of that, [defendant] was left outside of [Frias's] location. . . . They are not usually relationships in which . . . the supplier or the buyer might trust the other individual that he's dealing with. Whereas if you are contacting someone that you know very well, a family member or a really good friend of yours, you would probably tell them to . . . wait for you inside their house 'cause you would trust them around . . . your personal valuables . . . ."

Sergeant Huffman searched defendant in Detective Alvarado's presence. Detective Alvarado's saw Sergeant Huffman search defendant's "outer clothing and person and waistband area, pockets." Detective Alvarado testified that Sergeant Huffman conducted the "pat[] down" search of defendant because of officer safety. During the pat

down search, Sergeant Huffman removed from defendant's waistband area a plastic bag containing a large, thin Tupperware container.

c) Sergeant Huffman

Sergeant Huffman had been a deputy sheriff for 19 years. At the time of the incident, she was newly assigned to the narcotics unit, and was present at the scene of the incident "to assist [the other law enforcement officers], as they needed me to learn."

When Sergeant Huffman arrived at the residence, she observed two or three men, including defendant, detained, lying face down on the ground in the front yard. Their arms were "either to their sides or above their heads so that you could see them."

Sergeant Huffman had defendant, who was not handcuffed, stand up, and she conducted a pat down search of him. On cross-examination, defendant's counsel asked Sergeant Huffman, "Other than his just being there, did you personally have any reason to believe that [defendant] was involved in illegal activity?" Sergeant Huffman answered, "Well, yes. I mean, we're there for a narcotics search warrant. So we detained everybody who was there. So yes, it's very possible that he was involved." Sergeant Huffman also testified, "I didn't know what his involvement was at that house at the time, and we pat them down for our safety and everyone's safety there, pat down for weapons." Defendant did not engage in any behavior in Sergeant Huffman's presence that caused her to believe that he was involved in illegal activity, and defendant was compliant with her requests.

Sergeant Huffman did not recall if someone instructed her to search defendant, "[but] it's very possible someone could have instructed [her] to" do so. She doesn't recall if she spoke to Detective Alvarado prior to searching defendant. Sergeant Huffman conducted the search about 20 minutes after she arrived at the scene of the incident, after "they secured the location first [and] brought everybody out."

During the search, Sergeant Huffman felt a hard object in defendant's front waistband, and was concerned that it could be a weapon. Sergeant Huffman removed the object, found that it was a Tupperware container, which contained a large amount of a

white crystal substance resembling methamphetamine. Sergeant Huffman subsequently found two baggies containing what appeared to be methamphetamine in defendant's front pants pocket.

2. Defendant's Evidence

Defendant did not testify or present any evidence at the hearing on his motion to suppress evidence.

B. Procedural Background

The District Attorney of Los Angeles County filed an information charging defendant with one count of possession for sale of a controlled substance (methamphetamine) (§ 11378). The District Attorney also alleged that defendant had three prior drug-related convictions (§ 11370.2, subd. (b)), and that he had served one prior prison term (Pen. Code, § 667.5, subd. (b)). Defendant filed a motion to suppress evidence under Penal Code section 1538.5, and the trial court denied it.

Pursuant to a plea agreement, defendant pleaded no contest and admitted the prior drug conviction allegations. The prior prison term allegation was dismissed. The trial court sentenced defendant to county jail for a term of 6 years.

DISCUSSION

A. Standard of Review

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]" (*People v. Glaser* (1995) 11 Cal.4th 354, 362 (*Glaser*).)

B. Applicable Law

Under *Terry v. Ohio* (1968) 392 U.S. 1, when an officer detains a suspect, the officer may pat down the suspect's outer clothing if the officer has a reason to believe the suspect may be armed. (*Id*. at p. 30.) In that case, the United States Supreme Court held that "'[w]here a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.'" (*Fla. v. J.L.* (2000) 529 U.S. 266, 270, citing *Terry v. Ohio*, *supra*, (1968) 392 U.S. at p. 30.)

"[T]he officer need not be absolutely certain that the individual is armed; the crux of the issue is whether a reasonably prudent person in the totality of the circumstances would be warranted in the belief that his or her safety was in danger." (*People v. Avila* (1997) 58 Cal.App.4th 1069, 1074, citing *Terry v. Ohio*, *supra*, 392 U.S. at p. 27.) It is sufficient for the search if there is a substantial possibility that the person is armed. (*People v. Osborne* (2009) 175 Cal.App.4th 1052, 1061.)

C. Analysis

Defendant contends that his patdown search was unlawful because Sergeant Huffman, who conducted the search, was not aware of any specific facts that reasonably supported a suspicion that defendant was armed and dangerous; and "[e]ven if [Detective] Alvarado's 'knowledge' could be imputed to Sergeant Huffman, it would not be enough to justify the patdown search." We disagree.

In *People v. Thurman* (1989) 209 Cal.App.3d 817, the law enforcement officers entered a residence to be searched and found the defendant sitting silently and passively

on a sofa. Even though the defendant did not appear to be a threat, the officers ordered a pat search of him and found drugs. (*Id*. at pp. 820-821.) In holding that the search was proper, the court stated, "We have no hesitation whatever in holding that [the officer] acted reasonably and prudently in conducting the pat search of appellant in the circumstances. . . . The officers whose duty required them to execute the warranted search were . . . well aware they were engaged in an undertaking fraught with the potential for sudden violence. They were necessarily cognizant of the very real threat that the occupants of the residence were within an environment where weapons are readily accessible and often hidden, nor could they discount the possibility that one or more of the individuals found inside were personally armed. [¶] [That defendant did not appear to present an immediate threat] does not in any measure diminish the potential for sudden armed violence that his presence within the residence suggested. To require an officer to await an overt act of hostility . . . before attempting to neutralize the threat of physical harm which accompanies an occupant's presence in a probable drug trafficking residential locale, would be utter folly." (*Id*. at p. 823; see *People v. Samples* (1996) 48 Cal.App.4th 1197 [affirming the legality of a patdown search of an individual driving a car in which two subjects of a warrant were passengers].)

Detective Alvarado and Deputy Hwang had a reasonable belief that "criminal activity may be afoot" (*Terry v. Ohio*, *supra*, 392 U.S. at p. 30); they had a reasonable belief that defendant was involved in the possession or sales of narcotics. Deputy Hwang saw Frias enter the residence, and shortly thereafter defendant arrive at the residence and briefly have contact with someone inside the residence. Immediately thereafter, Deputy Hwang saw Frias leave the residence in his minivan while defendant remained in the front yard. Deputy Hwang told Detective Alvarado this information. Shortly after Frias left the residence in his minivan, Detective Alvarado participated in a traffic stop of Frias's vehicle, and Frias falsely denied to Detective Alvarado having any connection with the residence. When Detective Alvarado went to the residence, he saw defendant still standing in the front yard. Defendant was detained. Defendant does not dispute that

he was lawfully detained at the time he was searched. (See *Glaser*, *supra*, 11 Cal.4th at pp. 360-361.)

Detective Alvarado testified that he believed that defendant was involved in the possession or sales of narcotics at the time defendant was searched by Sergeant Huffman. The trial court found "credible and reasonable Detective Alvarado's opinion that the type of contact between [defendant] and Frias was consistent with a narcotics transaction." Detective Alvarado also testified that, based on his training and experience, it was common for narcotics dealers and purchasers to carry weapons, and he has reason to believe that every individual detained concerning "any narcotic search warrant" could be armed.

Defendant cites *People v. Sandoval* (2008) 163 Cal.App.4th 205, in support of his contention that the pat down search here was unlawful, but that case is distinguishable. In that case the police conducted a probation search of a residence where they believed narcotics were being sold. (*Id*. at p. 208.) When they arrived to conduct the search, they found the defendant, who was known to one of the officers for previous drug arrests, sitting on the steps of the residence smoking a cigarette. (*Ibid*.) The police conducted a patdown search of defendant and found a stun gun, a fixed-blade knife, and methamphetamine. (*Id*. at p. 209.) In finding the search illegal, the court stated that the officers testified they had no reason to believe the defendant was armed or involved in criminal activity, and distinguished *People v. Thurman*, *supra*, 209 Cal.App.3d 817 because in that case the police testified they were concerned the persons present in the residence might have guns. (*People v. Sandoval*, *supra*, 163 Cal.App.4th at p. 213.) A suspect's mere presence at a location where narcotics are thought to be, or where an authorized narcotics search is taking place, may not be sufficient to believe a suspect is armed. (*Ybarra v. Illinois* (1979) 444 U.S. 85, 93-94.)

Here, however, there was more. As noted above, Detective Alvarado and Deputy Hwang had a reasonable belief that defendant was involved in the possession or sale of narcotics. Unlike the defendant in *People v. Sandoval*, *supra*, 163 Cal.App.4th 205, defendant here was not merely in close proximity to the scene of the incident. In

addition, as also noted above, Detective Alvarado testified, based on his training and experience, that it was common for narcotics dealers and purchasers to carry weapons. Drug-related crimes are classic examples of inherently violent situations in which investigating officers are legitimately concerned about their safety. (*Ybarra v. Illinois, supra,* 444 U.S. at p. 106 [firearms are "tools of the trade" in the drug business]; *Glaser, supra,* 11 Cal.4th at pp. 367-368.) The danger is potentially greater when the premises to be searched are a private home than in a place of public accommodations because occupants of private residence are more likely to protect themselves from possible robbers. (*Glaser, supra,* 11 Cal.4th at pp. 367-368.)

Sergeant Huffman actually conducted the search of defendant. It is true that she did not recall if she spoke to Detective Alvarado prior to searching defendant, nor did she recall if someone instructed her to search defendant. She testified, however, that nonetheless "it's very possible" that someone did instruct her to search defendant.

The collective knowledge doctrine "allows courts to impute police officers' collective knowledge to the officer conducting a stop, search, or arrest." (*United States v. Villasenor* (9th Cir. 2010) 608 F.3d 467, 475.) That doctrine applies to searches as well as arrests. (*Terrell v. Smith* (11th Cir. 2012) 668 F.3d 1244, 1252.)

Defendant contends that for the collective knowledge doctrine to apply, the knowledge of the other officers must be "impart[ed]" to, or otherwise shared with, Sergeant Huffman. Sergeant Huffman, Detective Alvarado, and Deputy Hwang, were however functioning as a team working in close concert. Even if Detective Alvarado did not expressly order or request Sergeant Huffman to conduct a pat down search of defendant, it is reasonable to conclude that he implicitly did so because Sergeant Huffman's search of defendant was done in the presence of Detective Alvarado. Indeed, Detective Alvarado testified that Sergeant Huffman conducted the pat down search of defendant because of officer safety. Detective Alvarado could lawfully conduct a patdown search of defendant for officer safety; Sergeant Huffman, who was in Detective Alvarado's presence, should also be able to do so. Similarly, under the circumstances, it

is reasonable to conclude that Detective Alvarado implicitly imparted his knowledge to Sergeant Huffman.

It was not necessary that Detective Alvarado or any other law enforcement officer present at the scene communicate to Deputy Hwang all of the facts that they possessed that would justify the pat down search. "There remains for consideration the question of whether agent Fredericks [who authorized warrantless arrests of defendants] could rely upon information known to agents Lackey and Nielsen which had not been communicated to Fredericks. In *United States v. Stratton*, 453 F.2d 36, 37 (8 Cir.), cert. denied, 405 U.S. 1069, 92 S. Ct. 1515, 31 L. Ed. 2d 800 (1972), the court held that secret service agents who made warrantless arrests were not required at the moment of arrest to possess personal knowledge of all the facts and circumstances, but rather that probable cause was 'to be determined upon the objective facts available for consideration by the agencies or officers participating in the arrest . . . .' The court said: [¶] 'We think the knowledge of one officer is the knowledge of all and that in the operation of an investigative or police agency the collective knowledge and the available objective facts are the criteria to be used in assessing probable cause. The arresting officer himself need not possess all of the available information. As stated in *Stassi v. United States*, 410 F.2d 946 (5 Cir. 1969), "The officers involved were working in close concert with each other and the knowledge of one of them was the knowledge of all." [¶] We recognize that in some of the cases holding that the collective knowledge of the arresting officers could be considered in determining probable cause, the substance of information obtained by other officers had been communicated to the arresting officers. See, e. g., *United States v. Pitt*, 382 F.2d 322 (4 Cir. 1967). We do not find, however, that this is required, particularly where, as here, the agents were working in close concert.'" (*United States v. Bernard* (9th Cir. 1979) 623 F.2d 551, 560-561.)

Furthermore, Sergeant Huffman knew that defendant had been detained in connection with a narcotics transaction. Sergeant Huffman testified that she conducted the search after defendant was detained, and after she saw him lying face down on the ground in the front yard with his arms either to his sides or above his head. Sergeant

Huffman said that in addition to defendant being at the incident scene, she had reason to believe that defendant was involved in illegal activity because they were at the residence to execute on a narcotics search warrant, defendant and others that were there, and so "it's very possible that he was involved" in a narcotics transaction. From the fact that the defendant had been ordered to be prone on the ground, Sergeant Huffman could not only conclude defendant was a suspect but also that he could pose a danger. Sergeant Huffman also testified, "we pat[ted defendant] down for our safety and everyone's safety there, pat down for weapons."

In denying defendant's motion to suppress evidence, the trial court stated, "It cannot be the case that where two officers are present for a *Terry* search that both must have full knowledge to support a reasonable suspicion that the suspect is involved in narcotics activity and armed. . . . [I]t was sufficient that Detective Alvarado possessed those facts . . . and that Sergeant Huffman performed the search believing it necessary for officer safety." We agree with the trial court. The trial court's denial of the motion to suppress evidence was supported by substantial evidence, and the pat down search was reasonable.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.